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Thirty-ninth session
10–28 September 2018
Agenda item 10
Technical assistance and capacity-building

Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events in August 2014

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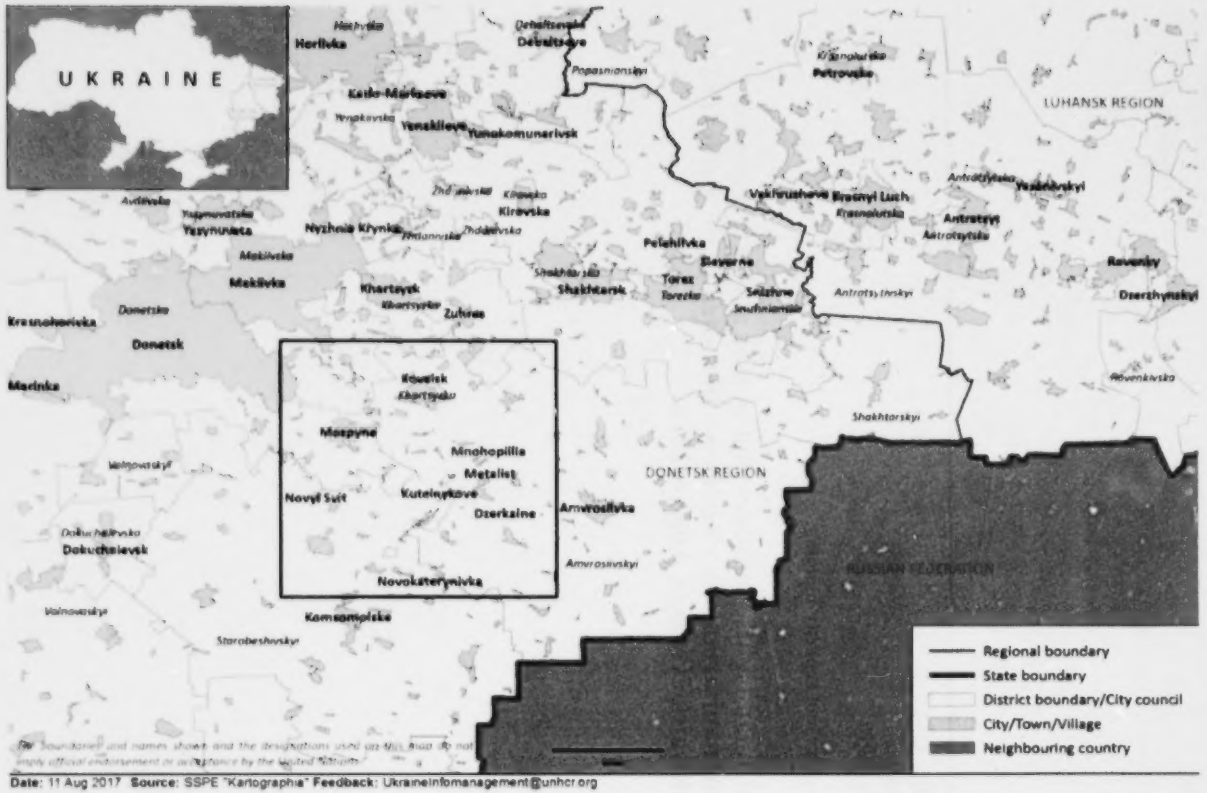
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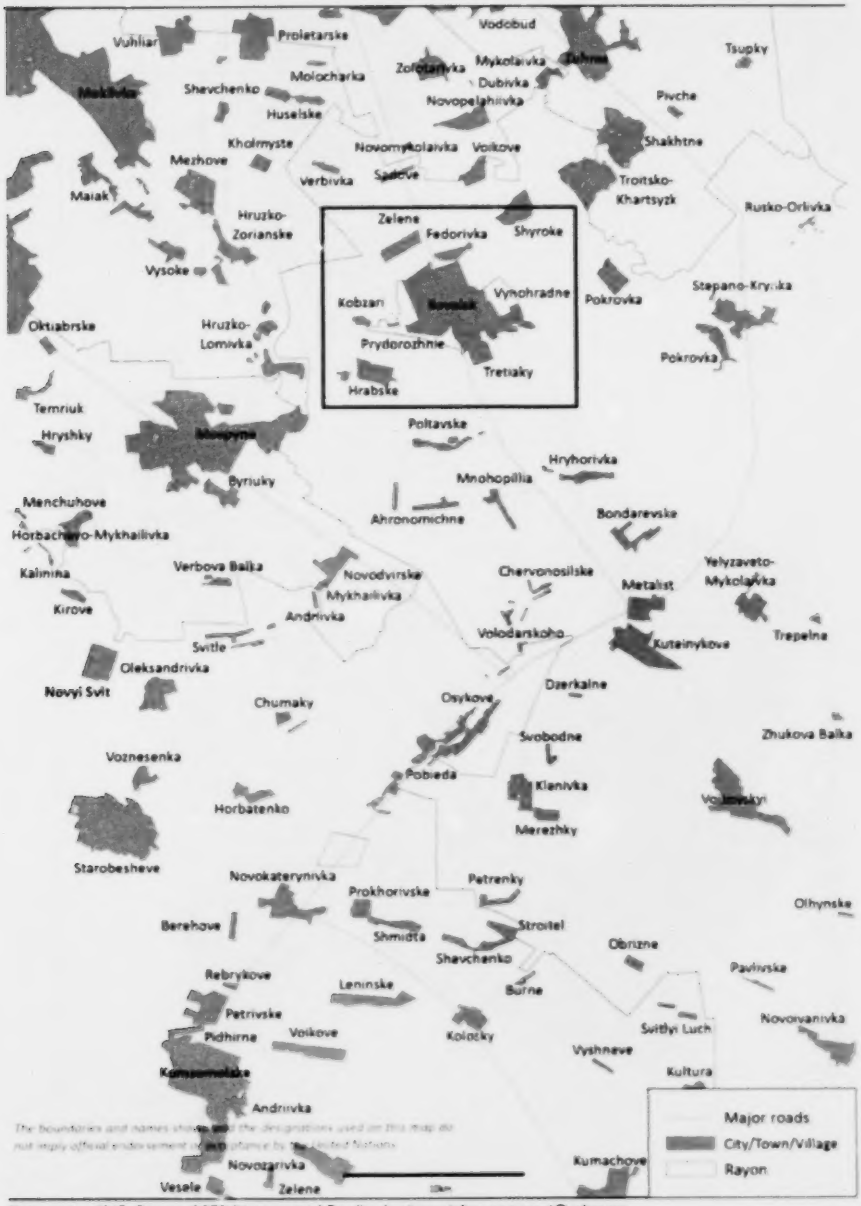
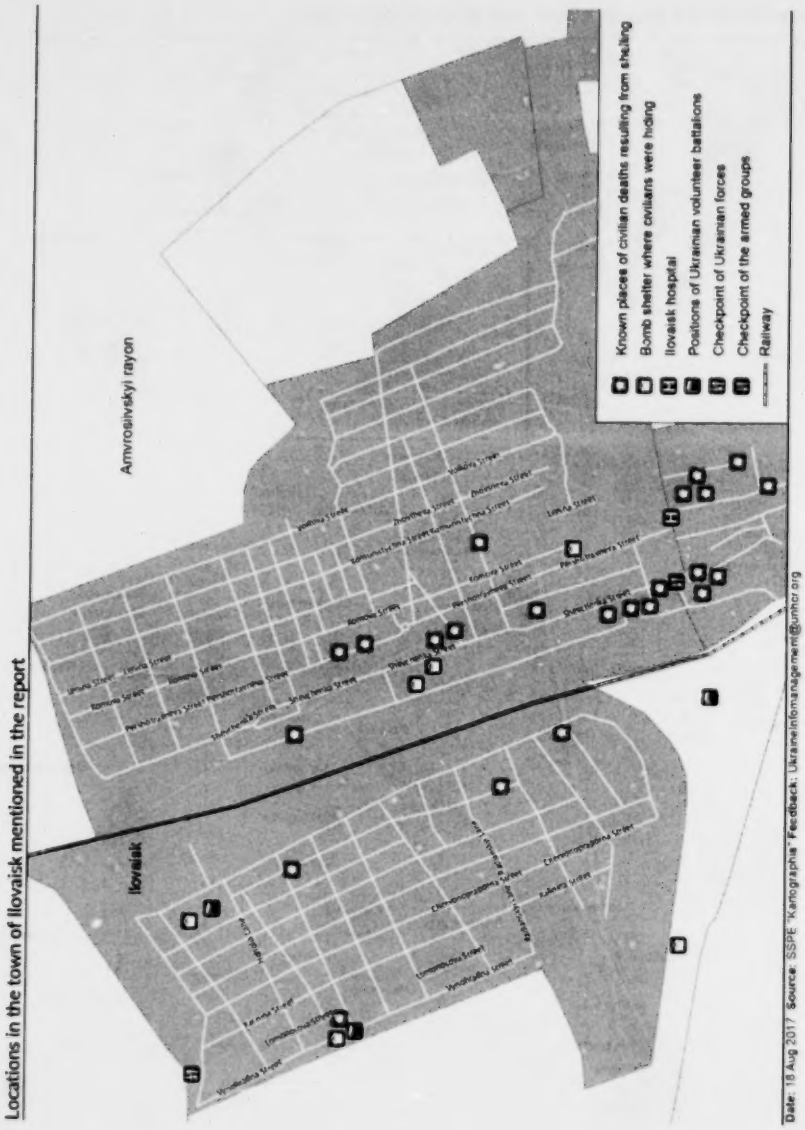
The area where the Ilovaisk events took place in August 2014



Date: 11 Aug 2017 Source: SSPE "Kartographia" Feedback: Ukraineinfomanagement@unhcr.org


Locations in the town of Ilovaisk mentioned in the report
Amvrosiivskyi rayon
Ilovaisk
Known places of civilian deaths resulting from shelling
Bomb shelter where civilians were living
Ilovaisk hospital
Positions of Ukrainian volunteer battalions
Checkpoint of Ukrainian forces
Checkpoint of the armed groups
Railway
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I. Executive summary

1. This report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) covers the multifaceted, interrelated and mutually reinforcing human rights violations and abuses and international humanitarian law violations, committed against civilians and persons hors de combat during the Ilovaisk events in August 2014, in particular, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)[1] documented numerous violations and abuses of the rights to life, liberty, security and physical integrity during these events.

2. OHCHR considers the Ilovaisk events emblematic of human rights violations and abuses and international humanitarian law violations that have been repeatedly committed during the conflict in eastern Ukraine: shelling of residential areas resulting in civilian casualties, killings of civilians and other protected persons, unlawful detentions, enforced disappearances and torture.

3. A non-exhaustive summary of relevant military developments is provided in the report for contextual purposes only. It does not aim at qualifying the nature of the armed conflict.[2]

4. From early April 2014, OHCHR observed a rapid escalation of violence in eastern Ukraine. Groups of armed men unlawfully seized public buildings, as well as police and security facilities, in cities and towns across the Donetsk and Luhansk regions, in a well-organized and coordinated fashion.[3] On 14 April 2014, the Government of Ukraine launched

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[1] Deployed on 14 March 2014 at the invitation of the Government of Ukraine, HRMMU is mandated to "monitor the human rights situation in the country, with particular attention to the Autonomous Republic of Crimea, Eastern and Southern regions of Ukraine, and provide regular, accurate and public reports by the High Commissioner on the human rights situation and emerging concerns and risks". HRMMU is also mandated to "recommend concrete follow-up actions to relevant authorities of Ukraine, the UN and the international community on action to address the human rights concerns, prevent human rights violations and mitigate emerging risks".

[2] On 24 April 2018, the Law of Ukraine №2268-VIII "On Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk regions of Ukraine" entered into force. The Law refers to the Russian Federation's armed aggression against Ukraine and formally assigns the areas in eastern Ukraine that are not controlled by the Government as under the occupation of the Russian Federation.
According to the findings of the Office of the Prosecutor of the International Criminal Court (ICC) in the course of its preliminary examination into the situation in Ukraine, "it seems that by 30 April 2014 the level of intensity of hostilities between Ukrainian government forces and antigovernment armed elements in eastern Ukraine reached a level that would trigger the application of the law of armed conflict". Information available to the ICC Office of the Prosecutor also "indicates that the level of organisation of armed groups operating in eastern Ukraine, including the "LPR" and "DPR", had by the same time reached a degree sufficient for them to be parties to a non-international armed conflict". The ICC Office of the Prosecutor also believes that "additional information, such as reported shelling by both States of military positions of the other, and the detention of Russian military personnel by Ukraine, and vice-versa, points to direct military engagement between Russian armed forces and Ukrainian government forces that would suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict". For the purpose of determining whether the otherwise non-international armed conflict could be international in character, the ICC Office of the Prosecutor "is also examining allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine" (International Criminal Court, Report on Preliminary Examination Activities 2016, 14 November 2016, paras. 168-170, and Report on Preliminary Examination Activities 2017, 4 December 2017, paras 94-95).
Since 2014, the Government of the Russian Federation and its senior officials, including President of the Russian Federation Vladimir Putin and Minister of Foreign Affairs Sergey Lavrov, have been reiterating on various occasions that the Russian Federation does not consider itself a party to the armed conflict in eastern Ukraine. The Government of the Russian Federation has also consistently denied the presence of regular Russian troops on the territory of Ukraine during the entire conflict period.

[3] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, 19 September 2014, para. 9.

a security operation[4] to re-establish control over territory controlled by armed groups, deploying units of the Ukrainian Armed Forces supported by volunteer battalions.[5] The hostilities with the armed groups, which from April 2014 were bolstered by the influx of foreign fighters, including citizens of the Russian Federation,[6] rapidly escalated to the level of an armed conflict. By the end of July 2014, the armed groups of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic'[7] controlled considerable parts of both regions, including parts of the State border with the Russian Federation.

5. Having regained control over a number of towns and villages in the conflict zone, and having advanced towards the State border with the Russian Federation in Donetsk region in June and July 2014,[8] Ukrainian forces [9] launched an operation to regain control over the town of Ilovaisk (Donetsk region, 40 kilometres south-east of Donetsk city) in early August. By mid-August, they took control of the villages surrounding Ilovaisk. From 18 to 28 August 2014, Ukrainian volunteer battalions fought the armed groups positioned in the town, and took partial control of it. During this time, the town was divided into areas controlled by Ukrainian forces and those controlled by armed groups. By 27 August 2014, Ukrainian forces were surrounded by the armed groups which, according to the Government of Ukraine, were reinforced by troops and weaponry from the Russian Federation. The Office of the Prosecutor of the International Criminal Court reported that the intensity of fighting in Ilovaisk has been attributed to "alleged corresponding influxes of troops, vehicles and weaponry from the Russian Federation to reinforce the positions of the armed groups".[10]

6. During the morning of 29 August 2014, having rejected proposals of armed groups and reportedly Russian Federation military to withdraw without their weapons, Ukrainian forces began to leave Ilovaisk in a southerly direction. Ukrainian soldiers maintain that as they retreated, they were attacked by regular troops of the Russian Federation.[11] By 31 August, at least 366 Ukrainian soldiers were killed and at least 429 were wounded; [12] hundreds others were captured. On 31 August and 1 September, the majority of captured Ukrainian soldiers, including those wounded, were released to Ukrainian forces. Approximately 300 captured Ukrainian soldiers were transferred to the control of armed groups of the 'Donetsk people's republic'. Until late 2014, most of them were released as a part of so-called 'exchanges'. Some 10 remained in captivity until mid-2015, when they were released. One soldier captured around Ilovaisk remained in detention until he was released on 27 December 2017.[13]

7. Hostilities in Ilovaisk and the surrounding villages had a devastating impact on the civilian population. In Ilovaisk, 600 out of 1,800 individual houses were destroyed and 116 multi-storey buildings were damaged. For three weeks, residents of Ilovaisk did not have electricity, water and gas due to damages caused by the hostilities. During this period, there

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[4] Referred to as 'anti-terrorist operation' (or 'ATO') by the Government of Ukraine.

[5] As security situation in the east of Ukraine deteriorated in April 2014, residents of Dnipropetrovsk, Donetsk, Luhansk and other regions united into groups of volunteers, which became known as "volunteer battalions". While the chain of command and subordination of these elements were loose in June 2014, these volunteer battalions were formally integrated into the structures of the Ministry of Internal Affairs and the Ministry of Defence of Ukraine.

[6] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, 19 September 2014, para. 14; and OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 17 September 2014, para. 3.

[7] Hereinafter referred to as 'Donetsk people's republic' and 'Luhansk people's republic'.

[8] OHCHR report on the human rights situation in Ukraine covering the period from 8 June to 15 July 2014, para. 10.

[9] For the purposes of this report, OHCHR uses "Ukrainian forces" to refer to the Armed Forces of Ukraine, National Guard of Ukraine, National Police of Ukraine, State Border Guard Service of Ukraine, Security Service of Ukraine and volunteer battalions.

[10] International Criminal Court, Report on Preliminary Examination Activities 2016, 14 November 2016, para. 168, and Report on Preliminary Examination Activities 2017, 4 December 2017, para. 92.

[11] See para. 78 below.

[12] See para. 81 below.

[13] See para. 124 below.

were also no functioning medical facilities. The shelling of Ilovaisk and two nearby villages resulted in the death of at least 36 civilians (18 men and 18 women). Monitoring conducted by OHCHR indicates that parties to the conflict employed explosive weapons in populated areas without complying with the principles of distinction, proportionality and precaution.[14]

8. OHCHR received consistent reports that during the Ilovaisk events, parties to the conflict were involved in the killing of civilians and persons *hors de combat*. Witness accounts and/or available forensic data suggest that these killings were not committed on a massive or systematic scale. OHCHR documented the killing of four civilians in Ilovaisk two of which were perpetrated by Ukrainian battalions. One civilian was killed by shelling while in the custody of Ukrainian battalions. OHCHR received allegations of the killing of three Ukrainian soldiers after they surrendered on 29 August 2014. Allegations also suggest that some Ukrainian soldiers wounded in combat were subsequently killed despite being *hors de combat*. OHCHR also documented the enforced disappearance of a male military doctor, which may have led to his death.[15]

9. OHCHR documented allegations that Ukrainian forces in Ilovaisk and surrounding villages subjected men, aged 30 to 66 years old, to torture or ill-treatment. The victims were suspected of either being members of, or otherwise affiliated with, armed groups. In Ilovaisk, from 18 to 28 August 2014, the majority of victims were held in school No. 14 by the "Donbas" volunteer battalion fighting within the Ukrainian forces. The conditions in which the men were held may amount to ill-treatment. The victims were subjected to beatings. To date, OHCHR has documented cases of thirteen individuals tortured or ill-treated in Ilovaisk and surrounding villages.[16]

10. Ukrainian soldiers, including those wounded, who were captured on 29 and 30 August 2014 during their retreat from Ilovaisk, were kept for two days in makeshift collection points located in open fields near the zone of hostilities. The treatment of these *hors de combat* soldiers was apparently determined by the individual unit that had captured them and therefore varied. Some men were treated in a manner that they described as "decent" while others were subject to ill-treatment and torture. Many reported having been denied medical aid and water. At least four wounded Ukrainian soldiers died due to the non-provision of adequate medical assistance.[17]

11. On 31 August and 1 September 2014, some 300 captured Ukrainian soldiers were placed in three detention facilities in Donetsk city and in one in Snizhne, under the control of the armed groups. The conditions of detention were reported to be degrading and humiliating, amounting to ill-treatment. The captured soldiers were divided into two groups: elements of the Ukrainian Armed Forces (professional and those drafted) and members of volunteer battalions. The latter were reportedly held in worse conditions. Torture was used during interrogations of captured soldiers to extract information, to punish them for joining a volunteer battalion or to compel them to join the armed groups. The most common forms of torture were beatings, mock executions and threats of physical violence. Members of the volunteer battalions who originated from Donetsk, Luhansk and Kharkiv regions were deemed "traitors" by armed groups and subjected to harsher physical treatment.[18]

12. Four years after the Ilovaisk events, limited steps have been taken by the parties to the conflict to investigate allegations of human rights violations and abuses and international humanitarian law violations, particularly those committed against civilians. The Prosecutor General's Office of Ukraine is conducting an investigation into violations and abuses committed against Ukrainian soldiers in Ilovaisk, such as summary executions, torture and ill-treatment as a part of two complex criminal proceedings that cover the whole period of the armed conflict in the east of Ukraine. One of the proceedings is investigating members of the 'Donetsk people's republic' and 'Luhansk people's republic' for "wide-scale and systematic violations of laws and customs of war" committed against civilians

[14] See paras. 38-46 below.
[15] See paras. 47-55 and 81-89 below.
[16] See paras. 56-70 below.
[17] See paras. 90-92 below.
[18] See paras. 93-127 below.

and captured soldiers in the context of the armed conflict in the east of Ukraine. A second investigation has been opened against State officials and those serving in the Armed Forces of the Russian Federation for "launching and waging aggressive war against Ukraine which caused death of people and other grave consequences". The conduct of the Ukrainian forces is not within the scope of either investigation.[19]

13. OHCHR recalls that accountability and justice are essential elements to fostering lasting peace and reconciliation. It is therefore critical to mobilize the national and international criminal justice systems to impartially, objectively, thoroughly and promptly address all human rights violations and abuses and international humanitarian law violations committed by all parties to the conflict to ensure that those responsible are held accountable, regardless of their affiliation. OHCHR reminds that all victims of human rights violations and abuses should have equal, effective and prompt access to justice and be provided with effective remedies, including access to rehabilitation and reparation mechanisms.

II. Methodology

14. The report focuses on human rights violations and abuses and international humanitarian law violations as they affected civilians and persons *hors de combat* during the Ilovaisk events in August 2014, in particular violations and abuses of the rights to life, liberty, security and physical integrity.

15. The report examines human rights violations and abuses and international humanitarian law violations committed in and around Ilovaisk between 1 and 31 August 2014, as well as the situation of individuals deprived of their liberty from 1 August to 31 December 2014 in the context of the Ilovaisk events.

16. The geographic scope of the report covering the events from 1 to 31 August revolves around the town of Ilovaisk and nearby villages, namely Ahronomichne, Chervonosilske, Fedorivka, Hrabske, Hruzko-Lomivka, Kobzari, Mnohopillia, Novokaterynivka, Osykove, Pivche, Pobeda, Pokrovka, Poltavske, Prydorozhne, Shakhtne, Shyroke, Troitske-Khartsyzk, Voikove, Vynohradne and Zelene. Concerning the situation of individuals deprived of their liberty in the context of the Ilovaisk events as of August 2014, the report covers all localities where these individuals were known to be held, including Ilovaisk and Donetsk.

17. The report documents accounts of the multifaceted, interrelated and mutually reinforcing human rights violations and abuses and international humanitarian law violations that occurred during these events but it is not intended to be an exhaustive record of the Ilovaisk events. Relevant military developments are provided in the report for contextual purposes only.

18. This report is based on information that HRMMU collected through more than 80 interviews with victims and witnesses and other sources. Both men and women were interviewed. The information was cross-checked and corroborated from several sources, including materials confidentially shared with HRMMU; official records; open-source documents and video, audio and photo materials (including those recorded by perpetrators); forensic reports; criminal investigation materials; court documents; and other relevant and reliable sources. When possible, HRMMU visited sites of incidents. Incidents highlighted in the report are based on at least one credible first-hand source. Patterns documented in the report are based on several credible reports of individual incidents which, together, appear consistent with, and have been corroborated by the overall body of credible information collected.

[19] According to the Office of the Prosecutor General of Ukraine, alleged crimes perpetrated by Ukrainian soldiers in regard to civilian population during Ilovaisk events have not been investigated because military prosecutors did not receive applications or information on such crimes and, therefore, there were no grounds to initiate criminal cases.

19. Guided by the "do no harm principle", HRMMU included the incidents only where sources granted their informed consent, and upon an assessment that the disclosure of information would not expose them to any protection risks.

20. Due to the scale and intensity of hostilities and other constraints, HRMMU did not have access to Ilovaisk until 2016. This complicated the process of interviewing potential sources, as the memories of victims and witnesses had faded, particularly regarding specific dates of events, leading to inconsistencies which called for additional corroboration. Furthermore, it was difficult to identify eyewitnesses of the events, as many local residents had left Ilovaisk and the vicinity at the time of heightened hostilities, or had spent most of the time in basements and other improvised bomb shelters. Some violations and abuses were committed without witnesses and thus were difficult to corroborate. Finally, several people refused to talk to OHCHR for fear of reprisals, trauma associated with these events, or other reasons.

21. In many cases it was difficult for OHCHR to ascertain whether the violations and abuses were committed following orders, due to a sense of impunity, or poor command and control of forces at the time. In a number of cases, victims had difficulties identifying the specific battalion or armed group to which the perpetrators belonged. In some villages, this may have been due to the regular rotation of battalions.

III. Legal framework

22. HRMMU analyzed factual events in the light of relevant norms and standards of international human rights law, international humanitarian law and international criminal law.[20]

23. International human rights law, in the form of ratified treaties and customary norms, applied throughout Ukraine for the whole period covered by this report.[21] While non-State actors, including armed groups, cannot become parties to international human rights instruments, it does not preclude them from being subject to human rights obligations under customary international law. It is increasingly accepted that those exercising government-like functions and effective control over a territory must respect human rights norms and standards when their conduct affects the human rights of individuals under their control.[22]

24. Despite lacking effective control over certain parts of its territory, the Government of Ukraine retains the obligation to uphold international human rights law, document and investigate effectively, promptly, thoroughly and impartially allegations of human rights violations and abuses, and ensure that perpetrators are held accountable. In line with the General Assembly Resolution 60/147, setting out Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, States should provide alleged victims of human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation.[23] States should endeavour to establish national programmes

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[20] Ukraine signed the Rome Statute of the International Criminal Court in 2000, but has not ratified it. In 2016, the Parliament of Ukraine adopted amendments to the Constitution of Ukraine, which allow for ratification of the Rome Statute; these amendments will enter into force in 2018. The Office of the Prosecutor of the International Criminal Court opened a preliminary examination of the situation in Ukraine on 25 April 2014. On 8 September 2015, under article 12(3) of the Rome Statute, the Government accepted the jurisdiction of the International Criminal Court with respect to alleged crimes committed on its territory since 20 February 2014 with no end date.

[21] Ratification: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN.

[22] See OHCHR report 'Accountability for killings in Ukraine from January 2014 to May 2016', para. 12, footnote 16.

[23] See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 3.

for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.[24] States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations.[25]

25. International humanitarian law regulates the conduct of parties to an armed conflict, the means and methods of warfare, and protects those who do not or who no longer directly participate in hostilities. In situations of armed conflict, all parties[26] to the conflict are bound by the applicable rules of international humanitarian law, whether customary or treaty-based. International humanitarian law imposes corresponding obligations on all parties, independent of the commitment of the other parties.[27]

Conduct of hostilities and treatment of civilians and persons hors de combat

26. The fundamental principle of international humanitarian law that all parties to a conflict have an obligation to distinguish between civilians and combatants applies in both international and non-international armed conflict.[28] Parties to a conflict may direct attacks against combatants or military objects and must not make the civilians and civilian population the object of an attack. Civilians are persons who are not directly participating in hostilities at the time of attack and are not members of the armed forces of a party to the conflict.[29]

27. Important rules of the conduct of hostilities, which include attacks, defensive and responsive military actions, are the prohibition of indiscriminate attacks,[30] proportionality[31] and precaution.[32] It may amount to a war crime to intentionally target civilians not taking direct part in the hostilities in both international and non-international armed conflict.[33] Allegations concerning an attack against civilians must be investigated, and where there is sufficient evidence, persons responsible for the commission of the offence or for ordering the offence must be prosecuted.[34]

28. International humanitarian law requires that persons *hors de combat*[35] are treated humanely. Wounded persons *hors de combat* are entitled to medical care and protection in

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[24] Ibidem, principle 16.

[25] Ibid.,principle 17.

[26] The provisions of common Article 3 of the four Geneva conventions bind all parties to non-international armed conflicts, including organized non-State armed groups. Common Article 3, which reflects elementary considerations of humanity, is supplemented by a number of other treaty provisions and by customary humanitarian law governing the conduct of parties to non-international armed conflicts.

[27] Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, Customary International Humanitarian Law: Volume 2: Rule 140. The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity.

[28] ICRC, Customary International Humanitarian Law: Volume 1: Rules (Cambridge, Cambridge University Press, 2005), Rule 1 (applicable to both types of conflict). In relation to international armed conflict, the principle of distinction is codified in Additional Protocol I: articles 48; 51(2). Although not explicitly stated, the same rule is implicit in Additional Protocol II art. 13(2) which relates to non-international armed conflict.

[29] ICRC, Customary International Humanitarian Law: Volume 1: Rules, rule 5. Note that the presence within a civilian population of non-civilians does not deprive the population of its civilian character (recognized as customary international law: International Criminal Tribunal for the former Yugoslavia, Prosecutor v Kordić and Čerkez, Case No. IT-95-14/2, Appeals Chamber, Judgment of 17 December 2004, para. 97); however, the population must remain predominantly civilian.

[30] ICRC, Customary International Humanitarian Law: Volume 1: Rules, Rule 11.

[31] Ibidem, Rule 14.

[32] Ibid, Rule 15.

[33] Rome Statute, Article 8 (2) (b) (i) and Article 8(2)(e)(i).

[34] ICRC, Customary International Humanitarian Law: Volume 2: Rules, Rules 158 and 150.

[35] Rule 47 of customary international humanitarian law defines the person hors de combat as (a) anyone who is in the power of an adverse party; (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape. Common

both international and non-international armed conflicts.[36] Customary international humanitarian law explicitly provides that "the wounded and sick shall be collected and cared for".[37]

Right to life

29. The right to life is a fundamental human right guaranteed in a variety of universal and regional human rights instruments which Ukraine has ratified.[38] It is a non-derogable human right that cannot be suspended, even at times of a public emergency.[39]

30. International humanitarian law prohibits a party to an international or a non-international armed conflict from wilfully killing or murdering civilians,[40] medical or religious personnel, or other persons taking no active part in hostilities or no longer doing so. Such acts are recognized as a war crime [41]

31. Both international human rights[42] and humanitarian law[43] require States to investigate extrajudicial, summary or arbitrary killings and murders, punish perpetrators and provide effective remedies to relatives. Relatives of victims are entitled to reparation, including adequate compensation, and the State must take measures to prevent further extrajudicial, summary or arbitrary executions or killings.[44]

Prohibition of torture and ill-treatment

32. Core international human rights instruments, to which Ukraine is a party,[45] expressly prohibit torture and other cruel, inhuman or degrading treatment. The prohibition of torture and other cruel, inhuman or degrading treatment is absolute; and derogation from it is not permitted,[46] whether in a state of war or a threat of war, internal political instability or any

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Article 3 to the Four Geneva Conventions provides that persons hors de combat "shall in all circumstances be treated humanely".

[36] Guarantees of provision of medical care and attention to wounded persons hors de combat are enshrined in Article 10 of the Additional Protocol I to the Geneva Conventions relating to the protection of victims in the international armed conflict and Article 7 of the Additional Protocol II to the Geneva Conventions relating to the protection of victims in the non-international armed conflict.

[37] ICRC, Customary International Humanitarian Law: Volume 1. Rules 110.

[38] Article 6 (1) of the International Covenant on Civil and Political Rights, Article 6 of the Convention on the Rights of a Child, Article 10 of the Convention on the Rights of Persons with Disabilities, Article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[39] International Covenant on Civil and Political Rights, Article 4.

[40] Common article 3 of the Geneva Conventions; Geneva Convention I, article 50; Geneva Convention II, article 51; Geneva Convention III, article 130; Geneva Convention IV, article 147; Additional Protocol I, articles. 41; 75(2)(a)(i) and 85(3)(e); Additional Protocol II, articles. 4(1) and 4(2)(a).

[41] Rome Statute, Article 8(2)(a)(i) and Article 8(2)(c)(i).

[42] United Nations Human Rights Committee, general comment No. 6, para. 3. See also Inter-American Court of Human Rights, Myrna Mack Chang v Guatemala, Judgment of 25 November 2003, Series C, No. 101, para. 153.

[43] ICRC, Customary International Humanitarian Law: Volume 1: Rules, Rule 158. See also, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 4.

[44] International Covenant on Civil and Political Rights, Article 2(3). United Nations Human Rights Committee, general comment No. 6, para. 3.; general comment No. 31, para. 15 and 16. Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions, principles 9, 18, and 20. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[45] International Covenant on Civil and Political Rights (ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[46] OHCHR notes the notification by the Government of Ukraine to the United Nations Secretary-General on 20 October 2015, that the application and implementation by Ukraine of its obligations under 16 treaties, including the Convention against Torture, "is limited and is not guaranteed" on territory deemed to be occupied and uncontrolled, and that this situation will continue to apply until

other public emergency.[47] International humanitarian law also prohibits torture in both an international and non-international armed conflict.[48] Under the Rome Statute, torture and cruel, inhuman or degrading treatment may amount to a war crime or a crime against humanity in certain circumstances.[49]

IV. Events from 1 to 28 August 2014

A. Military developments

33. The Ilovaisk events were the turning point of the initial stage of the armed conflict in eastern Ukraine and led to the signing of the Minsk Protocol of 5 September 2014.[50]

34. The town of Ilovaisk is located 40 kilometres south-east of Donetsk city. From May 2014, it was controlled by armed groups of the 'Donetsk people's republic'. According to the Temporary Investigative Commission on tragic events which led to deaths and captivity of members of volunteer battalions and Armed Forces of Ukraine near the town of Ilovaisk of Donetsk region (hereinafter Temporary Investigative Commission),[51] in the beginning of August 2014, the Headquarters of the Anti-Terrorist Operation took a decision "On carrying out a military operation to defeat main forces of the armed groups in Ilovaisk and taking control over it". By that time, Ukrainian forces, comprising units of the Ukrainian Armed Forces and volunteer battalions[52] had regained control over the areas to the south and south-east of Ilovaisk.

35. On 10 August 2014, Ukrainian volunteer battalions "Donbas" and "Shakhtarsk" made a first, unsuccessful attempt at taking control of Ilovaisk.[53] Over the following days, Ukrainian forces took control over the surrounding villages. On 18 August, "Donbas" and "Dnipro-1" volunteer battalions entered Ilovaisk. In the following days, supported by volunteer battalions "Myrotvorets", "Ivano-Frankivsk", "Kherson" and "Svityaz", they took control over parts of Ilovaisk to the west of the railroad, which crosses through the town from north to south.[54] Armed groups continued to control parts of Ilovaisk to the east of the railroad. Until 29 August, volunteer battalions and armed groups exchanged small arms and light weapons fire in the town. Both Ukrainian forces and armed groups also employed

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the complete restoration of Ukraine's sovereignty over its territory, runs contrary to the non-derogable nature of the prohibition of torture.

[47] International Covenant on Civil and Political Rights, Article 4 (2), Convention against Torture, Article 2 (2).

[48] The prohibition of "outrages upon personal dignity", "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" is recognized in Additional Protocols I and II, as well as article 3 of the Fourth Geneva Convention, as a fundamental guarantee for civilians and persons hors de combat.

[49] Rome Statute, Article 8 (2) (a) (ii), (iii) and (c) (i) (ii) and Article 7 (a), (f) and (k).

[50] On 5 September 2014, the Protocol on the results of consultations of the Trilateral Contact Group on joint measures aimed at the implementation of the Peace Plan of the President of Ukraine P. Poroshenko and of the initiatives of the President of Russia V. Putin was signed in Minsk, Belarus. The 12-point Minsk Protocol envisaged, inter alia, "an immediate bilateral ceasefire" and "monitoring and verification of the ceasefire by the OSCE".

[51] The Commission was established by Verkhovna Rada (the Parliament) of Ukraine on 4 September 2014. The preliminary report of the Commission was published on 20 October 2014 (http://www.pravda.com.ua/articles/2014/10/20/7041381/; last accessed on 28 September 2017). The report touched upon only military and political aspects of the events.

[52] While the chain of command and subordination was loose, in June 2014, these volunteer battalions were formally integrated into the structures of the Ministry of Internal Affairs and the Ministry of Defence. Two types of battalions were under the Ministry of Internal Affairs: operative battalions of the National Guard, such as "Donbas", and special police units, such as "Azov" and "Dnipro-1". The territorial defence battalions, such as "Aidar", Dnipro-2" and "Kryvbas", were under the Ministry of Defence. The only volunteer battalions that remained not integrated into the State structures were "UNA-UNSO" and "Ukrainian Voluntary Corps 'Right Sector'".

[53] Preliminary report of the Temporary Investigative Commission, 20 October 2014.

[54] Ibidem, HRMMU interviews, 13 June 2016, 11 October 2016, 23 May and 13 July 2017.

mortars, howitzers and multiple launch rocket systems while fighting for Ilovaisk and surrounding villages.[55]

36. By 24 August 2014, Ukrainian forces, which controlled the Ukrainian-Russian border some 35 kilometres to the south-east of Ilovaisk, left their positions due to cross-border shelling from the territory of the Russian Federation.[56] According to the Temporary Investigative Commission, on 24 August, regular Russian troops entered the territory of Ukraine and headed towards Ilovaisk.[57] In the evening of the same day, 10 soldiers from the 331st regiment of 98th Airborne Division of the Russian Armed Forces were captured by Ukrainian military near the village of Dzerkalne, 12 kilometres south-east of Ilovaisk.[58] According to the sources in the Russian Ministry of Defence, the paratroopers had lost their way while patrolling the State border of the Russian Federation with Ukraine which, according to the Ministry, was not marked.[59]

37. By 27 August 2014, Ukrainian troops in and near Ilovaisk were encircled by the armed groups allegedly reinforced by troops and weaponry from the Russian Federation. On 28 August, the Commander-in-Chief of the Ukrainian Armed Forces informed the commanders in Ilovaisk that an agreement had been reached "with the Russian side" on the evacuation of wounded and killed Ukrainian soldiers.[60] At 7 p.m., vehicles carrying wounded soldiers, marked with white flags bearing a red cross, departed from the villages of Ahronomichne and Mnohopillia, but came under fire and had to return.[61] The emblems were clearly visible as it is still light at that time in the middle of August, which makes attack against a protected vehicle a violation of the customary rule 30 of the international humanitarian law.

B. Impact of hostilities on civilians and casualties resulting from shelling

"Shelling had no pattern, it was always unpredictable."

"Nothing was particularly targeted and it seemed like the purpose was more to scare the population."

Residents of Ilovaisk

38. By August 2014, an estimated 12,000 to 13,000 civilians – out of a pre-conflict population of 16,000 – remained in Ilovaisk. The town was first shelled on 12 July 2014. Over the following days, shelling disrupted the electricity and water supply.[62] From 7 to 28 August, the town was shelled daily. By mid-August, shelling had cut off the supply of electricity, gas and running water to the town. Shelling damaged up to 600 private households (out of 1,800) and all 116 multi-story residential buildings in Ilovaisk.[63]

39. On the night of 7 to 8 August, Ilovaisk hospital was hit by a shell that damaged the main building and pharmacy, including the medicine storage. Of approximately 90 patients, who were in the hospital at that time, no one was killed or injured. Staff, patients, and the operating room were moved to the basement where, for three days, medical teams provided medical care and performed surgeries. As described by an interlocutor of OHCHR: "you

[55] HRMMU interviews and site visit, 13 July 2017.

[56] Preliminary report of the Temporary Investigative Commission, 20 October 2014, and Report on Preliminary Examination Activities 2016 of the Office of the Prosecutor of the International Criminal Court, 14 November 2016, para. 164.

[57] Ibidem.

[58] http://mediarnbo.org/2014/08/26/dopit-rosiyskih-desantnikiv-mi-ne-znali-shho-nas-vezut-v-ukrayinu-video/ (last accessed on 28 September 2017).

[59] http://www.bbc.com/russian/international/2014/08/140826_russian_paratroopers_ukraine_reaction, (last accessed on 28 September 2017); https://ria.ru/incidents/20140829/1021929011.html (last accessed on 28 September 2017).

[60] Preliminary report of the Temporary Investigative Commission, 20 October 2014.

[61] Ibidem.

[62] HRMMU interviews, 13 July 2017.

[63] HRMMU interviews and site visit, 13 July 2017.

can't imagine how it was to work there. No proper ventilation, the constant smell of blood that could not be washed off, the smell of other biological fluids of nearly 100 patients and the smell of dead bodies. All of that in the heat. We lacked food and nearly fainted while caring for patients".[64]

40. On 10 August, the hospital was forced to close, having run out of medical supplies. Furthermore, there was no electricity, water or gas due to damages caused by the hostilities. From then until the end of the hostilities in and around Ilovaisk on 30 August 2014, the town was deprived of any functioning medical facility. Residents would go to the homes of doctors and nurses for medical assistance.[65] Medics and paramedics of the Ukrainian volunteer battalions also provided medical aid. For instance the medical unit of 'Donbas' battalion in school No. 14 reportedly treated two or three injured civilians every day between 18 and 28 August 2014.[66] All such aid was provided with minimal medical supplies and equipment. Some injured and sick civilians were evacuated for medical care in hospitals elsewhere. From areas controlled by armed groups, the road to Zuhres was used,[67] and from the parts controlled by Ukrainian forces – the road to Khartsyzk.[68] Both of these roads were unsafe due to shelling.

41. From 17 to 18 August, armed groups arranged for several buses to evacuate some civilians (mostly women and children) from Ilovaisk to the areas north of the town controlled by the armed groups.[69] Civilians that stayed in Ilovaisk and who did not have a basement in their houses hid in public buildings.

42. In the western part of the town, where Ukrainian battalions took positions on 18-19 August, civilians hid in the basements of kindergarten No. 3 (1a, Svobody Street), school No. 14 (54, Lomonosova Street) and the railroad machine station No 191 (169, Lomonosova Street).[70] Kindergarten No. 3, where Ukrainian battalions were positioned from 19 to 26 August, hosted up to 150 civilians. In the basement of school No. 14, where Ukrainian battalions were positioned from 19 to 28 August, two rooms measuring two by 10 metres sheltered up to 50 people. Members of the Ukrainian battalions let civilians use these basements as shelter, and go out to get food or use the toilet.

43. In the eastern part of the town, controlled by the armed groups, civilians hid in the House of Culture (193B, Pervomaiska Street), the library (78, Shevchenko Street) and the railway station (37, Vokzalna Street).[71] Most of the basements in these buildings were not properly equipped to serve as bomb shelters. They had poor ventilation, lacked toilets and were affected by leaking water. Over 250 civilians, including injured persons, hid in the House of Culture. Many slept on wet concrete floors in the bomb shelter and in its adjacent basement. The yard of the House was directly affected by the hostilities. In one case two women sustained fragmentation injuries when shelling hit the yard.[72]

44. The vicinity surrounding Ilovaisk was also heavily affected by armed hostilities. On 2-3 August 2014, approximately 200 civilians were evacuated from the village of Hrabske (five kilometres south-west of Ilovaisk) to a convent 3.5 kilometres away, leaving only a few people in the village. In the period from August to September 2014 the control over this village shifted three times between armed groups and Ukrainian volunteer battalions.[73]

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[64] HRMMU interview, 13 July 2017.

[65] HRMMU interviews, 2 November 2016 and 13 July 2017.

[66] HRMMU interview, 11 November 2016.

[67] HRMMU interview, 13 July 2017.

[68] HRMMU interview, 11 November 2016.

[69] HRMMU interview, 13 June 2016.

[70] HRMMU interviews, 2 November 2016 and 13 July 2017.

[71] HRMMU interviews, 21 October 2016 and 13 July 2017.

[72] HRMMU interview, 13 July 2017.

[73] According to the information provided by the Government of Ukraine, the village of Hrabske was controlled by armed groups from 2-3 to 18 August 2014 and from 29 August 2014 onwards. The Ukrainian forces controlled the village in the period from 18 to 29 August 2014, following the military operation conducted between 12 and 18 August to regain control over this village.

In early September 2014, residents returned to the village and found most houses destroyed and pillaged.[74]

45. The villages of Mnohopillia (nine kilometres south of Ilovaisk) and Pokrovka (seven kilometres east of Ilovaisk) were shelled several times between 7 and 29 August. Shelling intensified during the few days before 29 August, forcing civilians to hide in basements for most of the time. According to local residents, both villages were controlled by Ukrainian forces during the whole month of August 2014. Looting, wilful destruction and military usage of civilian property were common. Reportedly, food stocks in the basements were consumed or purposefully destroyed; cutlery, cups, bed sheets, linens and vehicles were seized.[75]

46. Information received by OHCHR through its monitoring and interviewing indicates that parties to the conflict shelled Ilovaisk and the surrounding villages in non-compliance with the principles of distinction, proportionality and precaution while employing explosive weapons in densely-populated civilian areas.[76] Indiscriminate shelling of Ilovaisk and its closest villages of Kobzari and Zelene resulted in the death of at least 36 civilians (18 women and 18 men). Eleven of the victims (five women and six men) were killed in Ilovaisk between 7 and 18 August, when the town was fully controlled by armed groups; and 25 (13 women and 12 men) were killed between 19 and 28 August, during fighting between Ukrainian forces and armed groups in the town.[77] The total number of civilians injured during this period is not known; yet on 7 August alone, at least 83 civilians were reportedly injured by shelling in Ilovaisk town[78], and at least two dozen civilians injured in Ilovaisk in August 2014 sustained physical impairments.[79]

C. Killings of civilians

"I heard his screams, and then a soldier said 'take his body, he will die on his own'".

A detained civilian, witness to a killing

47. Witness accounts and available forensic data suggest that the killing of civilians in Ilovaisk and the surrounding villages did not occur on a massive or systematic scale. After Ukrainian forces left Ilovaisk, a mass grave with three bodies[80] was exhumed in the yard of school No. 14 where the "Donbas" battalion had been stationed.[81] OHCHR later established that the victims were civilians Valentyn Minich, Ihor Trufanov and Serhii Myronenko. According to the forensic reports, Mr. Minich and Mr. Trufanov had signs of firearm wounds on their bodies, while the Mr. Myronenko probably died as a result of shelling while deprived of his liberty in school No.14.

Case of Valentyn Minich

48. Valentyn Minich[82] remained in Ilovaisk while his family left on 17-18 August 2014. He reportedly wanted to look after their property, as many houses caught fire after being hit

[74] HRMMU interviews, 27 April and 27 June 2017.
[75] HRMMU interviews and site visit, 13 July 2017, HRMMU interview, 24 July 2017.
[76] HRMMU meetings, 13 July 2017.
[77] HRMMU civilian casualty records.
[78] HRMMU meeting, 13 July 2017.
[79] Ibidem.
[80] There is no internationally agreed definition of a 'mass grave'. The former United Nations Rapporteur on extrajudicial, summary or arbitrary execution, Mr. Bacre Ndiaye, defined mass graves as locations where three or more victims of extrajudicial, summary or arbitrary executions are buried, not having died in combat or armed confrontations. UN Doc E/CN.4/1993/50, 10 February 1993: Situation of Human Rights in the Territory of the Former Yugoslavia. Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992. Annex I: Summary of the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on His Mission to Investigate Allegations of Mass Graves from 15 to 20 December 1992, para. 5.
[81] HRMMU interviews, 13 June 2016.
[82] Date of birth 9 October 1948.

by shelling. A few days after leaving, his wife could no longer reach him. She returned to Ilovaisk on 1 September 2014 and learnt that his body had been found in a mass grave. According to a witness, their house had been looted and there were signs[83] of it having been used by the military.[84] The forensic death certificate issued on 2 September 2014 in Khartsyzk indicates that Mr. Minich died on 26 August 2014 from a gunshot wound to his head.

49. A witness, who had hidden in the basement of school No.14 from 8 to 28 August 2014, indicated that Mr. Minich had been there. On 26 August, he was reportedly informed that his house was on fire and went to check his property. Witnesses remember that he returned to the basement upset. The same day, Mr. Minich was summoned by a member of "Donbas" battalion, call sign Kat, who accused him of being a "spotter".[85] This was the last time he was seen alive. Other witnesses heard Mr. Minich being taken to the sports hall in the school, from where they then heard screaming and choking.[86] They reported seeing his body lying outside the school building the following morning. Reportedly, on 28 August, Mr. Minich's body was buried along with two others. According to a witness, he had bruises and lesions as if he had been dragged.[87]

Case of Ihor Trufanov

50. Since mid-July, Ihor Trufanov[88] and his wife were hiding every night from shelling in the basement of the railroad machine station[89], along with approximately 20 other civilians. On 19 August 2014, the volunteer battalions "Donbas" and "Dnipro-1" entered the premises. After checking the site, they reportedly questioned all the men, and allowed the civilians to stay, providing them with food and water. On 25 August, a battalion member spotted that Mr. Trufanov had a cell phone and took him away in an unknown direction. On the same day, all the civilians were moved by car to school No.14. The witnesses recall that Mr. Trufanov's wife was constantly inquiring about her husband, as he was nowhere to be found.[90]

51. On 26 August, a witness saw the victim's body in the school yard; his fingers were all black, one leg was injured and there were bullet holes in his stomach and chest.[91] The forensic death certificate issued on 2 September 2014 in Khartsyzk town indicates that Mr. Trufanov died on 26 August 2014 from a gunshot wound to his stomach which damaged his internal organs.

Case of Serhii Myronenko

52. On 22 August 2014, while traveling from Zelene to Ilovaisk, Serhii Myronenko[92] was detained at a checkpoint run by Ukrainian volunteer battalions at the intersection of Vynohradna and Lomonosova Streets. His whereabouts remained unknown to his family for six days, until 28 August, when Mr. Myronenko's parents were informed of his death.[93] The forensic death certificate issued on 2 September 2014 in Khartsyzk town indicates that Mr. Myronenko died on 26 August 2014[94] from a penetrating fragmentation wound to his head that injured his brain, probably due to shelling.

53. A witness reported to OHCHR that on 26 August 2014, Mr. Myronenko was brought to school No.14, where he was reportedly locked with seven other people in a metal cabinet located in a small detached building in the school yard. "Donbas" battalion members allegedly took them one by one for interrogation and beat them. On the morning of 27 August, the school was shelled by armed groups. After the second round of shelling, a

[83] In the yard, there was a blindage (a protective structure over a pit, usually used by military).
[84] HRMMU interviews, 13 June 2016.
[85] HRMMU interviews, 29 September 2016.
[86] HRMMU interviews, 21 October 2016.
[87] HRMMU interview, 29 September 2016.
[88] Date of birth 13 September 1968.
[89] Industrial facility in the town of Ilovaisk, near railroads, located at 169, Lomonosova Street.
[90] HRMMU interviews, 26 October 2016 and 8 August 2017.
[91] Ibidem.
[92] Date of birth 18 January 1981.
[93] HRMMU interviews, 6 July 2016 and 8 August 2017.
[94] There are reasons to believe that the date of death indicated in the forensic report may not be accurate.

witness saw that Mr. Myronenko was bleeding. Three people were killed in the shelling: Mr. Myronenko and two members of the battalion. On the morning of 28 August, a battalion doctor told the witness to bury Mr. Myronenko and the bodies of two other men lying near the school.[95] This incident could be considered a violation of the customary rule 115[96] of the international humanitarian law, as the grave was not even marked.

Case of Liudmyla Horbenko and Valerii Kolesnichenko

54. Civil partners Liudmyla Horbenko[97] and Valerii Kolesnichenko[98], both employees at the railway depot, were found killed in their home on 29 August 2014 at 36 Proletarska Street in Ilovaisk.[99] According to the forensic report, they both died on 27 August 2014. Ms. Horbenko died from a firearm bullet wound to the head, which caused brain damage, and Mr. Kolesnichenko died of a penetrating firearm abdominal wound that damaged his internal organs.[100]

55. While there were no eyewitnesses to the incident, local residents hiding in the basement of the house at 32 Proletarska Street reported to OHCHR that on 27 August, at around 3 p.m., they had heard the "heart-breaking" scream of a woman and then a fire round. On 29 August 2014, the bodies of the two victims were found in their basement, which was closed from the outside. Interlocutors who removed the bodies told OHCHR they saw traces of blood and bullet cases when entering the house. They found the bodies swollen and allegedly with fire wounds. It reportedly appeared that the face of both victims had been beaten. Witnesses also believed that the limbs of the victims had been broken. The couple was buried in the garden of the house and then reburied later in the cemetery.[101]

D. Inhuman or degrading conditions of detention, torture and ill-treatment of civilians

"In the pit, we were given food and water, but I did not take it... I hoped this would help me die sooner."

A victim of torture

56. Interviews conducted by OHCHR suggest that the victims of torture and ill-treatment committed by Ukrainian forces in Ilovaisk and its vicinity in August 2014 were men, aged from 30 to 66 years old, who were suspected either of being a member of, or otherwise affiliated with armed groups. They were kept in inhuman and degrading conditions, often lacking food and water in hot temperatures. They were reportedly beaten either to extract a confession or as a punishment for being suspected of affiliation to the armed groups. There were no reports of ill-treatment or torture of women or children.

In Ilovaisk

57. Most documented cases of torture and ill-treatment of civilians by OHCHR took place between 22 and 28 August 2014, in school No. 14, which was controlled by 'Donbas' battalion from 18 to 28 August 2014. In the yard, there was a small detached building with a few rooms. This was the school's workshop, containing various mechanical devices and instruments. The building was used by "Donbas" battalion for various purposes, including

[95] HRMMU interview, 29 September 2016.

[96] Rule 115 of customary international humanitarian law: The dead must be disposed of in a respectful manner and their graves respected and properly maintained.

[97] Date of birth 23 April 1960.

[98] Date of birth 14 June 1963.

[99] Proletarska Street is located immediately to the west of the railroad, which divided the town from north to south. Though this part of the town was largely controlled by Ukrainian forces, by 28 August 2014 the Ukrainian forces retreated to the school No. 14 (54, Lomonosova Street) – far west of the town. Therefore, OHCHR cannot establish with certainty who controlled this street at the time of the incident.

[100] Data provided by the forensic bureau in Donetsk city.

[101] Public account of the victim's relatives, 28 April 2015.

for the treatment of its wounded elements.[102] One side of the building contained a room with a metal cabinet measuring approximately 200×80×200cm.[103] OHCHR was informed that men suspected of being members of armed groups were held in that cabinet for a few days. Victims indicated that while there were some holes to allow air, it was very hot, stuffy and completely dark inside. Based on interviews, on different days, the number of men held in the cabinet varied from seven to 20. All of those detained that were interviewed by OHCHR reported that they were beaten with a view to extracting a confession.

58. On 22 August 2014, a 30-year-old man was detained with another man at a checkpoint, controlled by one of the Ukrainian volunteer battalions. Both were accused of being "spotters". After being interrogated by battalion members, they were reportedly put into a dog's metal cage measuring one metre by one metre, at the checkpoint, where they were kept for four nights. As they were not able to communicate with their relatives, their whereabouts were unknown. On the morning of 23 August 2014, having been threatened with violence and death, they were forced to dig trenches on Vynohradna Street. On the evening of 26 August 2014, they were taken by foot to school No. 14. Once there, they were locked in the metal cabinet with seven other men. After 30 minutes, two battalion members took the detainees out one by one and interrogated all of them. During their interrogation, the two aforementioned detainees were beaten by the "Donbas" battalion members. The 30-year-old man claims he was struck on the forehead and threatened that one of his fingers would be cut off. At some point, members of the battalion ordered the victim and another man to undress in the cabinet and wait there naked until the guards returned, threatening them with physical violence and to be "nailed". The detainees did as instructed. Time passed and the guards did not return, so they dressed. On 29-30 August 2014, before retreating, the "Donbas" battalion allowed all of the civilians detained in school No.14 to go home.[104]

59. A 66-year-old man was detained by "Donbas" battalion at the corner of Lomonosova and Hoholia Streets, around 25 August. He was accused of selling drugs and being an artillery spotter for armed groups. He was dragged to school No. 14 and put in a metal cabinet with 15 other people. While detained, he was told he would have to dig trenches. As he refused, he was kicked in the chest and ribs. He was kept in the cabinet for four days, with practically no access to water or to a toilet. All people held in the cabinet were able to leave only when the battalion left the school, on 28 August.[105]

60. Between 21 and 22 August 2014, a 44-year-old man was arrested by battalion members in his home, which was located close to an armed group military position. He was taken to a military base located in the kindergarten "Lastochka". On 25 August, he was moved to school No. 14 where he was detained for four days in the metal cabinet together with other men. His whereabouts were unknown to his family during that period. On the morning of 29 August, after the departure of the "Donbas" battalion, he returned home. A witness recalls that the victim's face and hands showed traces of beatings and he had a 61.

61. On 26 August 2014, a 54-year-old man and his son were detained by members of "Donbas" battalion in Ilovaisk and forcefully brought to school No. 14. Allegedly, there were approximately 20 men in the school that day: the young men were reportedly forced to dig trenches and, at other times, were locked in the metal cabinet. They were not provided with any food or water, although sometimes, relatives of the detainees managed to bring them food. On 26 and 27 August, the school was shelled and some battalion members were killed. The victim sustained shrapnel injuries to his left leg and right eye. His leg was bandaged and for the following five days he remained in the metal cabinet without further medical assistance. As the battalion members were leaving the school on 28 August, they opened the metal cabinet and told all the detainees to return home. The victim had to crawl to his

[102] HRMMU interviews, 21 October and 2 November 2016.
[103] HRMMU site visit, 13 July 2017.
[104] HRMMU interview, 29 September 2016.
[105] HRMMU interview, 6 July 2016.

house due to his injuries and, from there, he was brought to the hospital in Khartsyzk. His left leg was amputated and he still has not recovered sight in his right eye.[106]

62. On 24 August 2014, while he was repairing the windows of his relative's house on Izotova Street, an elderly man was approached by two battalion members wearing camouflage uniforms and balaclavas. Reportedly, they spoke rudely to him, calling him a "separatist" and mocking him. One battalion member hit him in the chest with a rifle butt a couple of times and the battalion members then left. The victim died the following week, but the cause of his death is unknown.[107]

In Mnohopillia

63. On 10 August 2014, a man traveling from Hryhorivka to Mnohopillia to visit his mother was stopped at the entrance of Mnohopillia, at a checkpoint controlled by Ukrainian forces, including volunteer battalions "Donbas" and "Azov". Battalion members shot in the direction of the victim to scare him and then beat him while his wrists and legs were tied with a rope. Then they tied a rope around his neck and dragged him through a field until he began to suffocate and lost consciousness. Reportedly, a soldier of the Ukrainian Armed Forces asked the battalion members to release him. The victim suffered numerous hematomas, and his sight deteriorated.[108]

64. On 11 August 2014, seven or eight men wearing camouflage without insignia demanded a local resident of Mnohopillia to give them his car. When he refused, they searched his house and found a hunting rifle. He was then taken to the outskirts of the villages and, together with two other detained men from Mnohopillia, was forced to fill trenches with earth for more than an hour. A bag was then put over the victim's head and he was transported in the trunk of a car to Osykove (approximately 13 kilometres away). The other two victims were in another car. For about three hours, the victim was kept in Osykove where he was interrogated by three members of the Ukrainian battalions who wanted him to confess to being a "separatist" or a "spotter". They reportedly took him by the hands and legs, threw him on the ground face down, and beat him with metal chains. On the same evening, he was released in a field, and had to walk about four kilometres home. The victim told OHCHR his body was covered in blood, his ribs were broken and he was in pain for more than three weeks. He still has scars on his legs from the metal chains. All of his documents were seized and never returned.[109]

In Hrabske

65. OHCHR received reports of civilians detained by Ukrainian volunteer battalions in a pit at the northern entry of Hrabske, in August 2014.[110] For example, one man was stopped and searched as he approached a military position allegedly belonging to the "Donbas" battalion. He was put in a pit shirtless and questioned about other local residents, while battalion members fired shots around him. He was kept in the pit for three hours. Then the battalion members put a bag over his head and brought him to another military position in Mnohopillia, where he was kept outside for some time and questioned about his identity. At some point, the battalion members put him into a car, drove him away and left him on the side of the road. They warned him never to use this road again or he would be killed. He walked back home.[111]

In Pokrovka

66. In the morning of 14 August 2014, eight armed men wearing black uniforms and balaclavas entered a man's house in Pokrovka. They asked him to unlock his minivan. After

[106] HRMMU interview, 27 October 2016.
[107] HRMMU interview, 18 October 2016.
[108] HRMMU interview, 29 June 2016.
[109] HRMMU interviews, 13 and 24 July 2017.
[110] HRMMU interviews, 27 April and 27 June 2017.
[111] HRMMU interview, 27 June 2017.

finding a Saint George ribbon[112] inside the van, three of the armed men started violently beating the man in the stomach and head with their weapon butts causing him to temporarily lose consciousness. Another man made a small cut in the victim's neck with a knife. Before leaving, the perpetrators looted the house, taking money, jewellery, documents, household items and clothes. The following morning, they returned, put an automatic rifle to the victim's ear, and demanded a written statement donating his cars, money and other personal belonging to support the Ukrainian Armed Forces. In the second part of August, the victim saw that the Ukrainian forces used his minivan to transport weapons and wounded soldiers.[113]

In other locations around Ilovaisk

67. OHCHR documented cases in which detained civilians who were suspected either of being a member of, or otherwise affiliated with armed groups, were kept in several locations and subjected to ill-treatment and torture with the view to punishing them or extracting information or confessions.

68. On 11 August 2014, a civilian was stopped by five unidentified armed men in camouflage on the road from Pokrovka village to Ilovaisk. The victim's ID documents and phone were seized and he was questioned about Russian numbers found in his phone. When shelling started, the victim was put in an uninhabited building nearby. Another man was being held there, bearing bruises on his body. Both were later transported to Starobesheve. On the way, the victim was constantly beaten with weapon butts, especially in the neck area, until he became numb from the pain.[114]

69. In Starobesheve, the victim was ill-treated and tortured in what he described as a former sports park, allegedly controlled by the "Shakhtarsk" battalion.[115] There, unidentified armed men in camouflage beat him with rifle butts in the chest, kidneys and legs while laughing. The victim was then put into a pit together with two other detainees. In the evening, men in balaclavas, with call signs Pop and Psiholog, reportedly interrogated and beat the victim whose hands were taped behind his back. The perpetrators also laid the victim on the ground on his stomach and pulled his hands up until his arms broke. The victim was then placed back into the pit, where he remained for approximately seven days. One day, battalion members came back from the front line and severely beat each man kept in the pit. The victim was beaten, his teeth were broken and he was threatened to be killed. Later he was transferred to an unfinished building in the vicinity of the Kurakhove water storage reservoir, where a doctor provided medical assistance and the detainees were allowed to wash.[116] The victim was later released.

70. In another case, an armed group member was detained by Ukrainian forces after he was seriously wounded in combat on 10 August 2014, near Ilovaisk. He was first taken to a hospital and provided with medical aid. At some point, two men in camouflage and one in civilian clothes entered his hospital room and made the medical personnel leave. Then they reportedly subjected the victim to electric shocks in the stomach and burnt his toes with a lighter. They also pressed a spoon on his left ribs, which was very painful. As the victim could not talk or move due to previously sustained wounds, the perpetrators left. A few days later, the victim and another wounded member of an armed group were placed into a pit measuring 2.5×2.5 meters. The Ukrainian forces soldiers guarding them reportedly threw stones at them, did not provide water, and forced them to get up and then pushed them back on the ground. One soldier poured alcohol on the victim's arm and flicked a lighter on and off next to him. One day, the victims were transported to another building (possibly in

[112] A Saint George Ribbon was a component of many high military decorations awarded by the Russian Empire, the Soviet Union, and the current Russian Federation. In 2005 it was revived as a symbol of the commemoration events related to the Second World War. In 2014, the symbol was widely used by armed groups in eastern Ukraine.

[113] HRMMU interview, 26 July 2017.

[114] HRMMU interview, 27 October 2016.

[115] On 17 October 2014, "Shakhtarsk" battalion was disbanded due to the numerous violations committed by its members.

[116] HRMMU interview, 27 October 2016.

Kurakhove), where six other members of armed groups were detained.[117] Shortly after, they were released in exchange for captured Ukrainian soldiers. Some victims were not returned their documents.[118]

V. Events from 29 to 31 August 2014

A. Military developments

71. At 1 a.m. on 29 August 2014, the web-portal of the presidency of the Russian Federation posted a statement by President Putin appealing to the armed groups "to open a humanitarian corridor for encircled Ukrainian servicemen to avoid unnecessary victims and to allow them to leave the area of hostilities without impediments".[119] Early in the morning of 29 August, Russian media disseminated a statement of the armed groups in which they supported President Putin's initiative and expressed their readiness "to ensure the security of the withdrawal of Ukrainian servicemen from the encirclement with the condition that they shall pass through the created corridor without their weapons".[120] Reportedly, representatives of the Russian troops near Ilovaisk passed the same proposal to Ukrainian forces early in the morning of 29 August.[121]

72. These proposals were not accepted by the Ukrainian military command.[122] At 8 a.m. on 29 August, Ukrainian forces, with their weapons and ammunition, moved in two columns of armoured military vehicles, military and civilian trucks, buses and other vehicles out of the villages of Ahronomichne and Mnohopillia, where they had gathered by 6 a.m. on 29 August. They took two parallel roads heading to Starobesheve town and Novokaterynivka village.[123]

73. Soon after departing, the columns came under intense shelling and small arms and light weapons fire. Hundreds of Ukrainian soldiers were killed or wounded in this attack.[124] Witnesses reported to OHCHR that one of the unarmoured trucks displaying a self-made 1×1 metre white flag with a red cross that carried over a dozen wounded Ukrainian soldiers from Mnohopillia was hit by a heavy weapon, killing all inside but one.[125]

74. Some Ukrainian soldiers, individually or in groups, managed to break the encirclement. Many surrendered either soon after the attack, or later that day, or during the following days. A group of Ukrainian soldiers occupied positions in the village of Chervonosilske and fought back until 30 August when they surrendered.[126] Captured Ukrainian soldiers were held in open places until 31 August and 1 September. During those two days, the majority of them, including those who were wounded before being captured, were evacuated to Government-controlled territory in vehicles arranged by Ukrainian forces.[127] Some 300 Ukrainian soldiers, including at least 109 members of volunteer battalions, were handed over to

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[117] HRMMU interview, 1 August 2017. The detention of eight members of armed groups in this building is also corroborated through a video posted on 17 August 2015, dated 15 August 2015: https://www.youtube.com/watch?v=AixkFBip4WM (last accessed on 28 September 2017).

[118] HRMMU interviews, 27 October 2016 and 1 August 2017.

[119] http://kremlin.ru/events/president/news/46506 (last accessed on 28 September 2017).

[120] https://www.infox.ru/news/220/social/society/135461-opolcenie-podderzalo-prizyv-putina-o-gumanitarnom-koridore-dla-voennyh-ukrainy?slug=opolcenie-podderzalo-prizyv-putina-o-gumanitarnom-koridore-dla-voennyh-ukrainy (last accessed on 28 September 2017); https://ria.ru/world/20140829/1021860892.html (last accessed on 28 September 2017).

[121] Preliminary report of the Temporary Investigative Commission, 20 October 2014.

[122] Ibidem.

[123] HRMMU interviews, 18, 21 and 28 October 2016, and 21 January 2017.

[124] For more details, see para. 81 above.

[125] HRMMU interviews, 14 September and 4, 9 and 11 November 2016, and 29 June 2017.

[126] HRMMU interviews, 11 November 2016 (three individuals).

[127] HRMMU interviews, 7 October 2016, and 6 February and 12 April 2017.

the armed groups of the 'Donetsk people's republic'. They were released within so-called 'exchanges'[128] by the end of 2014, while some 10 remained in captivity until mid-2015.

75. The Government of Ukraine maintains that Russian Federation regular troops attacked the Ukrainian forces withdrawing from Ilovaisk on 29 and 30 August. According to the Office of the Prosecutor General of Ukraine, 3,500 strong nine battalion-tactical groups of the Armed Forces of the Russian Federation equipped with tanks, armoured vehicles and artillery penetrated the territory of Ukraine on 24 August 2014.[129]

76. The Government of the Russian Federation has been denying the presence of regular Russian Federation troops on the territory of Ukraine during the conflict. On 21 January 2015, the Minister of Foreign Affairs of the Russian Federation, Sergei Lavrov, commented on the question about presence of Russian troops and weapons in eastern Ukraine as follows: "Regarding troops and weapons. We have heard it many times. I say every time: if you state it, show me the facts. No one can show us the facts, or does not want to".[130] On 17 December 2015, the President of the Russian Federation, Vladimir Putin, stated "we did not deny that there were Russian military in Donbas solving certain problems in military sphere, but it does not mean the presence of regular Russian troops there".[131]

77. On 27 August 2014, the 'prime-minister' of the 'Donetsk people's republic', Alexandr Zakharchenko, stated that "during all this time [of the conflict], there were 3,000-4,000 of them [Russians] in our ranks".[132] Further he was quoted as saying, "alongside with us, current [Russian] military are fighting; instead of going on vacation, they came to us".[133]

78. Most of the Ukrainian soldiers captured during the Ilovaisk events and interviewed by OHCHR maintain that they were attacked and captured by Russian Federation soldiers. They highlighted: 1) the distinct accent of their captors, which was not typical for Russian-speaking residents of Ukraine;[134] 2) the type of uniform their captors wore ("Russian digital camouflage",[135] "digital camouflage")[136] which, according to them, was typical for the Armed Forces of the Russian Federation and was not broadly available in Ukraine; 3) conversations with their captors who introduced themselves as belonging to certain units of the Armed Forces of the Russian Federation ("Pskov Airborne Division",[137] "Pskov Brigade",[138] "25th Airborne Brigade"[139], "Russian contracted soldiers",[140] "Tula paratrooper",[141] "from Kostroma"[142], 'VDV [airborne] hospital of the Russian Federation in Rostov region',[143] "I am a paratrooper from Pskov"),[144] or otherwise affiliated with the Russian army[145]; 4) overheard conversations between captors (who compared regular army salary with

[128] Paragraph 5 of the Minsk Protocol envisaged "to release immediately all hostages and illegally detained persons". Based on this provision, the Government of Ukraine and armed groups carried out a number of simultaneous releases (broadly referred to as "exchanges") of detainees, mainly of members of the armed groups and Ukrainian soldiers.

[129] http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=213793 (last accessed on 28 September 2017).

[130] https://www.youtube.com/watch?v=4DSy-6K971k (last accessed on 28 September 2017).

[131] https://www.youtube.com/watch?v=H-TR85FMiBM (last accessed on 28 September 2017).

[132] https://rutube.ru/video/48d31e134b7f6ff1e7f236b820b115f7/ (last accessed on 28 September 2017).

[133] http://tass.ru/mezhdunarodnaya-panorama/1404553 (last accessed on 28 September 2017).

[134] HRMMU interviews, 5 April, 30 September, 7 and 18 October and 3 November 2016, and 26 January 2017.

[135] HRMMU interviews, 5 April and 23 September 2016.

[136] HRMMU interviews, 30 September 2016 (two individuals) and 26 January 2017.

[137] HRMMU interview, 18 October 2016.

[138] HRMMU interview, 23 September 2016.

[139] HRMMU interview, 3 November 2016.

[140] HRMMU interview, 28 October 2016.

[141] HRMMU interview, 7 October 2016.

[142] HRMMU interviews, 30 September, 9 and 30 November 2016.

[143] HRMMU interview, 21 July 2017.

[144] HRMMU interview, 21 October 2016.

[145] "We were initially told that it would be a training exercise, but then commanders told us that we must enter Ukrainian territory in order to stop shelling of Russia", HRMMU interview, 18 October 2016.

triple pay for undertaking armed action in Ukraine);[146] 5) as detainees, they were taken across the border to the Russian Federation before being transported back to Ukraine to detention facilities near or in Donetsk city;[147] 6) weapons and equipment used by captors were produced in the Russian Federation and not used by the Ukrainian Armed Forces before the conflict.[148] Ukrainian soldiers interviewed by OHCHR maintain that they could clearly distinguish between regular troops of the Russian Federation, whom they fought on 29 and 30 August, and members of armed groups who controlled the broader perimeter around Ilovaisk, and whom they fought before 29 August and to whom they were handed over on 31 August 2014 and during the following days.

B. Civilian casualties

79. At least five civilians (three women and two men) were killed by shelling from 27 to 29 August, in Komsomolske and Osykove, along the retreat route of the Ukrainian forces.[149]

80. In the afternoon of 29 August, a wounded Ukrainian soldier was hiding in the forest belt between Leninske and Novokaterynivka villages, near the road taken by one of the columns of Ukrainian forces earlier that day. Between 2 and 3 p.m., after the fighting along this road was over, a civilian vehicle stopped near him. It had A4 sheets of paper with the word "children" on its front and rear windshields and white handkerchiefs on its mirrors. After a short talk with the Ukrainian solider, the male driver returned to the vehicle. Before he sat back in the vehicle, an armoured personnel carrier positioned some 400 metres away fired at him and the vehicle.[150] The driver, Mr. Volodymyr Popkov, his wife, Mrs. Tetiana Popkova, their 14-year-old daughter, Daryna Popkova, and Ms. Tamara Nazarova, were killed.[151]

C. Alleged killings of persons hors de combat

81. According to the Office of the Prosecutor General of Ukraine, during the Ilovaisk events, 366 Ukrainian soldiers were killed and 429 were wounded[152], mostly on 29 and 30 August. In early September 2014, the majority of bodies of Ukrainian soldiers from the Ilovaisk area were brought to the Dnipropetrovsk and Zaporizhzhia regional forensic bureaus.[153] According to the latter, the cause of death in most cases was due to explosive and fragmentation injuries.[154] They also reported that some bodies had decomposed to such an extent that it was extremely difficult or impossible to establish the exact cause of death.[155]

82. OHCHR received allegations of the killing of Ukrainian soldiers after they had surrendered on 29 August 2014. Further allegations have suggested that some wounded Ukrainian soldiers were killed while being *hors de combat*, after the hostilities were over. For one such case, forensic evidence did not support the allegation.[156] To date, OHCHR could

[146] HRMMU interview, 11 October 2016.
[147] HRMMU interview, 18 October 2016.
[148] HRMMU interview, 25 July 2017.
[149] HRMMU civilian casualty records.
[150] HRMMU interviews, 5 April and 5 October 2016.
[151] Ibidem.
[152] Letter from the Prosecutor General's Office of Ukraine to HRMMU, 31 July 2017.
[153] 155 bodies from Ilovaisk and its vicinity were delivered to Dnipropetrovsk regional forensic office (HRMMU interview, 7 October 2016), and approximately 180 bodies were delivered to Zaporizhzhia regional forensic office (HRMMU interview, 20 October 2016).
[154] HRMMU interviews, 7 and 20 October 2016.
[155] Ibidem.
[156] A Ukrainian soldier told OHCHR that his fellow soldier was heavily wounded when the civilian vehicle they were driving was hit by a shell. The victim was allegedly killed by several shots after being unable to follow the order of Russian soldiers to climb onto the armoured personnel carrier which was collecting captives. His body was recovered and identified later. Forensic record proves the soldier died as a result of explosive wounds. No bullet wounds were found on his body (HRMMU interview, 7 October 2016).

not obtain corroborating forensic evidence that would support such claims, including the allegations detailed in paragraphs 84 to 87 below.

83. OHCHR also received an allegation that during the whole conflict period, some 20 members of the armed groups of the 'Donetsk people's republic', whose bodies were received from Ukrainian forces, could have been tortured before their death and/or killed while in detention. OHCHR did not receive, however, specific information on those members of the armed groups who could have been killed while *hors de combat* during the Ilovaisk events.[157] Yet, OHCHR does not exclude that such information could become available in the future.

Alleged killing of three surrendered Ukrainian soldiers hors de combat

84. OHCHR received information that during the morning of 29 August, some 20 Ukrainian soldiers loaded onto a truck as part of the column of vehicles with Ukrainian forces retreating from the village of Mnohopillia towards the village of Novokaterynivka. Some 30 minutes after departure, the truck went under fire, and most of those on board were killed or wounded. Seven survivors, many of whom had light wounds, hid on the roadside. After the fighting was over, they waived an improvised white flag indicating that they were surrendering. Armed men from a nearby hill shouted at them to lay down their weapons and to crawl onto the hill. When Ukrainian soldiers reached the top of the hill, the commander of the armed group stationed nearby – whom they learned later from their captors held the rank of senior lieutenant – ordered them to remove their bulletproof vests and helmets and to undress.[158]

85. According to one of the survivors, one soldier was taking off his clothes very slowly because he was wounded, which apparently infuriated the senior lieutenant. He began firing at the soldier from a distance of 15 metres, missing him. He then came closer and fired two shots into the victim's back and head.[159] Another witness told OHCHR that the senior lieutenant shouted at the soldier that he was undressing too slowly, and allegedly shot him first in the back and then in the head.[160] The soldiers were then ordered to stand up and go. One of them, a sergeant, pleaded several times with the senior lieutenant not to kill his fellow soldiers as they were very young. Two witnesses told OHCHR they saw the senior lieutenant fire two shots from a Kalashnikov into the sergeant's back and head.[161] As the captives walked, a third soldier repeatedly asked the senior lieutenant if he could call his mother. Two witnesses, walking at a distance from him, heard two or three shots. When, they looked back they saw the man lying on the ground.[162] A third witness told OHCHR he saw the perpetrator allowing the soldier to pass by, and then shot him in the back.[163] When the group of captured soldiers reached a location where other soldiers were held, they witnessed a major rebuking the senior lieutenant; the major then assured them that nothing would happen to them.[164] The survivors were later handed over to Ukrainian forces.

Alleged killings of wounded Ukrainian soldiers hors de combat

86. OHCHR interviewed a number of Ukrainian soldiers who suggested that on 29 August, they witnessed the killing of wounded Ukrainian soldiers *hors de combat* after the fighting was over. In all these cases, the witnesses did not see bodies of the alleged victims.

87. In one case, a Ukrainian soldier reported to OHCHR that he hid in a field near Novokaterynivka village, where many killed and wounded Ukrainian soldiers were lying. After the hostilities were over, he saw groups of armed men in camouflage combing the field. They reportedly approached the Ukrainian soldiers and took some of their belongings such as bullet-proof vests. He also heard them make single shots.[165] In another case, a

[157] HRMMU meeting, 13 July 2017.
[158] HRMMU interview, 3 November 2016.
[159] HRMMU interview, 26 January 2017.
[160] HRMMU interview, 7 October 2016.
[161] HRMMU interviews, 7 October 2016 and 26 January 2017.
[162] HRMMU interviews, 3 November 2016 and 26 January 2017.
[163] HRMMU interviews, 7 October and 4 November 2016.
[164] HRMMU interview, 3 November 2016.
[165] HRMMU interview, 23 September 2016.

wounded Ukrainian soldier was hiding in the forest after his vehicle came under fire on the road from Mnohopillia to Novokaterynivka. When the shooting ended, he heard several people scream "I am wounded!" followed by single shots.[166] In a third case, after fighting stopped along the road from Mnohopillia to Novokaterynivka, several Ukrainian soldiers hiding in a field nearby saw an airborne infantry fighting vehicle (BMD) 300-400 metres away, with soldiers sitting on it, moving slowly through the field. The Ukrainian soldiers heard single shots fired from the BMD. They also heard single shots being fired in the forest, about one kilometre away.[167]

An enforced disappearance which may have led to death

88. On 30 August, a few dozens of wounded Ukrainian soldiers, mostly from "Donbas" voluntary battalion, were in Chervonosilske village, after their fellow soldiers left, having decided either to break through or to surrender. The wounded were attended by a few paramedics from the "Donbas" battalion and an unarmed doctor. The survivors reported that during that day, a truck arrived in Chervonosilske.[168]

89. The commander, addressed by his subordinates as colonel, told wounded Ukrainian soldiers and medics to get into the truck and added "we do not fight with doctors".[169] At some point paramedics noticed that the doctor was not with them. Reportedly he remained in Chervonosilske. Several days later, armed men broke into the house where he was hiding, took him to the yard, beat him and then drove away with him. He has not been seen since, despite strenuous efforts of his relatives to establish his whereabouts.[170]

D. Inhuman or degrading treatment of persons *hors de combat*

90. On 29 and 30 August 2014, hundreds of Ukrainian soldiers were captured, including many who were wounded. During these two days, they were kept in makeshift collection points located in open fields near the zone of hostilities. The treatment of persons *hors de combat* was determined to a large extent by which individual unit held them. A number of Ukrainian soldiers reported to OHCHR that they were treated "decently", with some Russian commanders instructing their subordinates to treat captives humanely.[171] In one case, the commander intervened immediately to stop one of his elements who was guarding captives and was kicking a wounded Ukrainian soldier in the back and pointing a gun at him.[172]

91. At the same time, OHCHR documented a few cases where treatment of persons *hors de combat* could amount to degrading treatment and, at times, to torture. For example, some Ukrainian soldiers were forced to undress above the waist and lie face down or kneel on the hot ground or paved road for hours.[173] A Ukrainian soldier informed OHCHR that the men who interrogated him (whom he believed were Russian Federation soldiers) hit his wounds with their hands, inflicting severe pain.[174] Having been brought to various collection points, captured wounded soldiers would reportedly hardly receive water; some said they were given water in exchange for their watches.[175]

92. None of the parties to the conflict had enough emergency medical supplies to meet the needs of those in critical condition, including their own soldiers. The light painkillers and bandages available were insufficient to rescue those in a critical condition.[176] A captured Ukrainian colonel of the medical service with a national Red Cross ID was allowed to

[166] Ibidem.
[167] HRMMU interviews, 9, 29 and 30 November 2016.
[168] HRMMU interview, 11 November 2016.
[169] Ibidem.
[170] HRMMU interview, 29 November 2016.
[171] HRMMU interviews, 18 October and 3 November 2016.
[172] HRMMU interview, 30 October 2016.
[173] HRMMU interviews, 9 November and 10 December 2016.
[174] HRMMU interview, 5 April 2016.
[175] HRMMU interviews, 5 October, 9 November and 30 November 2016.
[176] HRMMU interviews, 23 September and 11 November 2016, and 29 June 2017.

provide first aid to the wounded soldiers.[177] OHCHR documented the death of four wounded Ukrainian soldiers while they were kept in makeshift collection points located in open fields near the hostilities, due to lack of urgent medical assistance: one soldier with a leg wound, two soldiers with stomach wounds, and one wounded in the throat.[178]

VI. Inhuman or degrading conditions of detention, torture and ill-treatment of Ukrainian soldiers

"I want them to be punished. We were kept and treated like slaves. I am happy I survived."

Ukrainian soldier tortured in Donetsk city

93. According to the General Prosecutor's Office of Ukraine, approximately 300 Ukrainian soldiers were captured during the Ilovaisk events.[179] Some were captured before 28 August 2014, but most on 29 and 30 August as they retreated from Ilovaisk; up to 10 were detained in early September after local residents found them in nearby fields.[180]

94. These soldiers were eventually transported to four main locations controlled by different armed groups: the seized police building in Snizhne town; a building allegedly located on Bortsiv Revolutsii Street, the seized buildings of the Academy of Internal Affairs, and the seized building of the regional department of the Security Service of Ukraine (SBU) in Donetsk city. In October 2014, some detainees were transferred back to Ilovaisk, where they were forced to work on the reconstruction of the town.[181]

95. The conditions in all detention facilities in Donetsk city and Snizhne were inhuman due to overcrowding, lack or absence of mattresses, absence of day light, lack of fresh air, inadequate sanitary conditions, insufficient and inadequate food, and lack of medical aid.

96. Armed groups used torture during the interrogation of the captured soldiers to extract information, to punish them for joining the volunteer battalions, or to try to compel them to join armed groups. The most common forms of torture were beatings, including with elements of sexual violence; mock executions; and other threats of physical violence. The most systematic torture was used in the seized building of the SBU regional department in Donetsk city.[182]

97. OHCHR documented cases of captured Ukrainian soldiers who were ill-treated or tortured en route to these detention facilities. For example, on 30 August 2014, a member of Ukrainian battalion "Kryvbas" was captured near Pokrovka, reportedly by three armed members of "Oplot" armed group. As he was escorted to the village, he was beaten with hands and guns and kicked, losing consciousness a few times. The victim was forced to undress above the waist and kneel. For a few hours he was interrogated while his hands were tied, and he was kicked in the head, resulting in a broken nose and several bruises on the face. Members of the armed groups also shot between his legs and around his head. They showed him a plastic bag containing human ears and said they belonged to a fellow soldier who had been shot dead. The perpetrators called the victim's wife and demanded a ransom. The victim was fed and left for the night in the basement of the house of a local resident. In the morning, he was transferred to the building of the former Academy of the Ministry of Internal Affairs in Donetsk city.[183]

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[177] HRMMU interviews, 30 September, 3, 4, 9 and 30 November 2016, and 26 January 2017.

[178] HRMMU interviews, 10 July, 23 September, 18 October, 4, 9, 10, 11 and 30 November 2016, 26 January and 29 June 2017.

[179] Letter from the Prosecutor General's Office of Ukraine to HRMMU, 22 June 2017.

[180] HRMMU meeting, 13 July 2017.

[181] HRMMU interviews, 18 November 2014, 4 and 21 April, 14 September, 18 and 21 October, 5, 9, 18 and 30 November and 10 December 2016, and 23 May 2017.

[182] Ibidem.

[183] HRMMU interview, 11 September 2016.

A. Detention facility in Snizhne

98. The detention facility in Snizhne was located in a seized police building, on 2 Militseiska Street, which also had a temporary detention facility ("ITT"). It was controlled by armed groups who wore chevrons and patches of "Novorossiia", "Oplot" and "Oplot Spetsnaz".[184] The commander in charge of the facility seemed to be a man with the call sign Kent. Other armed groups' members that were there as guards went by call signs Diadia Fiodor and Doctor.

99. According to witnesses, some 200 Ukrainian soldiers were detained in this facility from the end of August 2014 to the end of October 2014: mainly members of the 51st and 55th brigades of the Ukrainian Armed Forces, and of volunteer battalions "Dnipro-2" and "Kryvbas".[185]

100. OHCHR interviewed former detainees held in Snizhe, who reported that they were captured in combat south of Ilovaisk on 24 and 25 August 2014 by the Pskov Airborne division of the Russian Armed Forces.[186] For example, a member of the Ukrainian volunteer battalion "Dnipro" told OHCHR that his unit was captured on 24 August 2014, near Osykove, by a well-organized military unit, with the commander referred to by others as "starshyna".[187] On 25 August 2014, these Ukrainian soldiers were handcuffed with plastic straps and loaded onto trucks. They arrived at what seemed like a huge military camp with many tents busy with activity, and were informed that they were in Taganrog, in the Russian Federation. They stated that another group of approximately 40 captured Ukrainian soldiers were already present in the camp. The captured soldiers were reportedly given Russian army food rations and water.[188] On 26 August 2014, this group of Ukrainian soldiers was delivered to the facility in Snizhne where some Ukrainian soldiers were already being detained and more brought the following days.[189]

101. According to witnesses, in Snizhne, the captured soldiers were divided into two groups: one comprised officers, another consisted of privates. The privates were kept in a garage, the roof of which was leaking. For the first few days, captured soldiers slept on the concrete floor until they were provided with some wooden planks. Other privates were placed in cells, with 30 to 32 individuals put in a cell designed to hold seven. Each detainee reportedly received a piece of bread and one cigarette per day.[190]

102. As for the officers, they were reportedly forced into a pit near the building, and were interrogated three times, each time by different interrogators. On 27 August 2014, 11 out of reportedly 200 officers were transferred to the seized building of the SBU regional department in Donetsk city. The others remained in Snizhne and were moved from the pit to cells. Six persons were placed in each cell, intended to accommodate two people.[191]

103. While deprived of their liberty, Ukrainian soldiers were reportedly subjected to threats of physical violence. They perceived these as being imminent, which in itself may amount to torture.[192] Several times, detainees were forcibly awakened at night and made to

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[184] HRMMU interviews, 21 April, 18 October and 10 December 2016.
[185] HRMMU interview, 4 April 2016.
[186] HRMMU interviews, 21 April, 18 October and 21 December 2016.
[187] Rank of company sergeant major in the Russian Federation Military.
[188] HRMMU interviews, 18 October and 10 December 2016.
[189] Ibidem.
[190] HRMMU interviews, 4 April and 18 October 2016.
[191] HRMMU interviews, 4 April and 10 December 2016.
[192] The simple threat of the occurrence of violence is prohibited by Article 5 of the American Convention on Human Rights when it is sufficiently real and imminent, may constitute in itself a transgression of the norm dealt with (Inter-American Court of Human Rights, *Tibi v. Ecuador*, 7 September 2004. Series C No. 114, par. 147; see also *Baldeón-García v. Peru*.; in the same sense, European Court of Human Rights, Soering v. United Kingdom, 7 July 1989, Series A Vol. 161, par. 111; and Human Rights Committee, *Miguel Angel Estrella v. Uruguay* (74/1980), 29 March 1983, paras. 8(3) and 10. Moreover, the imminent and credible nature of a threat of torture or physical violence is what comprises severe mental suffering, which can be torture in and of itself (Inter-American Court of

stand in line outside. They were told they would be shot, with shots fired at their feet on the ground. They were also punched, kicked and beaten with rifle butts.[193] When not being subjected to such physical violence, detainees reported being threatened with further violent acts towards them. One detainee was threatened with having his ear cut off and being shot in the stomach.[194] Another was told his eyes would be taken out.[195] A further was told a grenade would be thrown into his cell.[196] Such violations seem to have taken place when there was no supervision by commanders of the armed groups.

104. According to witnesses, there were approximately 30 wounded Ukrainian soldiers held in Snizhne from August to October 2014. An armed group member call sign 017 allowed one of the detainees, a surgeon, to operate on wounded soldiers, and provided him with surgical supplies and bandages.[197]

105. Every day, except on Sundays, the detainees were forced to load boxes of ammunition or to clean the debris of ruined buildings without any personal protection equipment.[198] They were usually escorted by one or two adult men and two or three that reportedly looked to be 16-17 years old, all armed with guns or machine guns. During that time, armed groups' members would beat the detainees and threaten to shoot them. Local residents reportedly threw stones at the detainees, accusing them of "destroying their homes". Detainees who could work received larger food portions of soup or porridge twice per day.[199]

106. Three Ukrainian soldiers reported[200] that during their detention in Snizhne, they witnessed the killing of a local civilian, allegedly accused of looting by the armed groups. According to these witnesses, the civilian was kept in the open cabin of a vehicle parked in the yard of the ITT for more than a week. His hands were handcuffed to handles above the doors. His body was blue and his back was severely injured. He was denied food, water and medical aid. The witnesses heard his screams for days until he reportedly died on 13 September 2014. According to the witnesses, members of the armed groups put his body into a black plastic bag and took it away.[201]

107. On 13 September 2014, the commander of armed groups in this detention facility (Kent) read out a list of 73 soldiers to be released the following day at one of the checkpoints on the contact line. They were exchanged for 65 members of the armed groups who had been detained by the Government over the course of the conflict.[202] On 14 September 2014, some detainees were transferred to the detention facility in the seized SBU building in Donetsk city from where most were released the same day. The other detainees held in Snizhne were transported to Donetsk city on 29 October 2014 and released on 31 October 2014.[203]

Human Rights, *Baldeón-García v. Peru*. 6 April 2006. Series C No. 147, par. 119; see also *Maritza Urrutia v. Guatemala*. 27 November 2003. Series C, No. 103, para. 92).

193 HRMMU interview, 30 November 2016, and victim's written testimony dated 28 March 2017.

194 HRMMU interview, 21 April 2016.

195 Ibidem.

196 HRMMU interview, 4 April 2016.

197 HRMMU interview, 19 July 2017.

198 Rule 95 of customary international humanitarian law prohibits that detainees be involved in the work that has a "direct connection with the operations of the war". In the context of international armed conflict, the Third Geneva Convention provides that "unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature". In the context of non-international armed conflict, Additional Protocol II provides that persons who are deprived of their liberty for reasons related to the armed conflict "shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population".

199 HRMMU interviews, 4 and 21 April 2016.

200 HRMMU interview, 21 April 2016.

201 For more details on this case, see OHCHR report on 'Accountability for killings in Ukraine from January 2014 to May 2016', paras. 96-97.

202 Written testimony of a victim sent to HRMMU, 30 March 2017.

203 HRMMU interview, 4 April and 18 October 2016.

B. Detention facilities in Donetsk city

Seized building of the Academy of the Ministry of Internal Affairs

108. Interviews conducted by OHCHR suggest that some Ukrainian soldiers captured south of Ilovaisk between 28 and 30 August 2014 were brought to the seized building of the Academy of the Ministry of Internal Affairs of Ukraine in Donetsk city. The facility was run by a local armed group bearing the flag of the 'Donetsk people's republic' on their chevrons. At least 40 soldiers from the 93rd and 52nd brigades of the Ukrainian Armed Forces, as well as members of the "Donbas" battalion, were reportedly held in this facility.[204]

109. On 31 August 2014, some 30 members of the Ukrainian battalion "Kryvbas" were captured near Novokaterynivka village. They were loaded into a truck and transferred to the seized building of the Academy in Donetsk, reportedly following an order given by a commander, call sign Grek who, according to witnesses, had the ID of the Russian special police regiment "SOBR".[205]

110. In another case, a member of "Kryvbas" battalion captured by two members of "Oplot" armed group around Pokrovka, on 30 August 2014, was brought to this facility on 31 August 2014. He spent the first week in a basement with approximately six other Ukrainian soldiers and a local civilian man who was held there for a few weeks as a "disciplinary measure".[206] They slept on cardboard on the floor. After a week, the detainees held in the basement were moved to the former armoury room, which was twice smaller than the basement. Interviewed victims reported that some forty other Ukrainian soldiers had been already held there, in cramped conditions.[207]

111. According to the victims, they were not beaten in this facility and were provided with food and water. Every day, they were forced to work unloading and moving ammunition at a damaged factory. The interviewees stressed that it was extremely dangerous, as anything could detonate at any moment. Reportedly, all those held in this facility were released by mid-September 2014.[208]

Building allegedly located on Bortsiv Revolyutsii Street

112. On 30 August 2014, eight members of "Donbas" volunteer battalion and the 93rd brigade of the Ukrainian Armed Forces were captured near Chervonosilske. After several hours, they were handed over to armed men with chevrons reading "Cossacks' Union, region of the Don Army". The Ukrainian soldiers were loaded onto trucks and delivered to a one-storey building allegedly located on Bortsiv Revolyutsii Street, in Donetsk city. Wounded soldiers were provided with medical aid.[209]

113. For two days, six members of "Donbas" battalion were kept in a shed and slept on wooden trays. They were then moved to the basement of the building where they were kept together with 15-20 soldiers from "Kryvbas" battalion and two from "Donbas" battalion. Several times, armed group members came to the basement with knives and threatened to cut the detainees. One member of the "Donbas" battalion was taken out of the basement and beaten. Other detainees heard him screaming and said that his body was bruised when he returned.[210]

114. On 5 and 6 September 2014, two detainees were taken from the basement and allowed to cook some food. There, from a distance of 15-20 metres, they saw the guards bringing 10 members of the "Kryvbas" battalion out of the basement and lining them up near the building. The commander of the armed group, call sign Batya, became angry and began firing under their feet and above their heads. One bullet ricocheted off the ground

[204] HRMMU interviews, 21 October and 9 November 2016.
[205] HRMMU interview, 21 October 2016.
[206] HRMMU interview, 9 November 2016.
[207] HRMMU interviews (two individuals), 9 November 2016.
[208] HRMMU interviews, 21 October and 9 November 2016.
[209] HRMMU interview, 5 November 2016.
[210] Ibidem.

and hit one of the detainees in the thigh. When he fell on the ground screaming with pain, Batya told him that he would be provided with medical aid only if he gunned down one of his fellow soldiers. The guards hit him several times all over his body; however, a female doctor stopped them and provided the victim with medical aid. He was told to return to the line, and Batya continued shooting from his pistol into the ground or air around the soldiers. Then the chief guard of the facility, call sign Sviatoi, brought the two witnesses back to the basement. They continued hearing gunshots being fired for another hour. The interviewee did not see these 10 "Kryvbas" soldiers again. On 7 September 2014, most of the Ukrainian soldiers held in this facility were exchanged.[211]

Seized building of Donetsk regional SBU department

115. The seized building of the Donetsk regional SBU department, located on 62 Shchorsa Street, in Donetsk city, was used by armed groups as another detention facility. The commander in charge of the facility had the call sign Adrenalin. The guards were mainly from the "Oplot" battalion of armed groups.[212]

116. On 31 August 2014, 109 volunteer battalions members, mostly from "Donbas", and elements of the Ukrainian Armed Forces who had been captured around Ilovaisk were transported on trucks to the seized SBU building in Donetsk. There, in the courtyard, they were forced to line up and partially undress. The armed groups' members ordered them to put their heads down and allowed a LifeNews[213] journalist to film the detainees.[214] A few dozen civilians (men, women and children) were brought to the yard. Pointing at the detainees, the armed groups' members told the civilians that they [battalion members] were "fascists" and "were killing the civilians and destroying their homes". In response, the crowd of civilians started mobbing the battalion members, spitting into their faces. The detainees found this to be particularly humiliating and degrading.[215]

117. The detainees were forced inside the building where the conditions of detention were inhumane and may amount to ill-treatment.[216] There, approximately 60 to 70 battalion members were held in a basement measuring three to four metres by 10 metres. The basement had no fresh air, day light, or running water. Buckets served as toilets in a small room. Many slept on the concrete floor.[217] Members of the Ukrainian Armed Forces were kept on the ground floor, in a former archive, sleeping on cardboard arranged over six metal rack shelves stacked from floor to ceiling. Three times a day, the detainees were given access to the toilet facilities – one minute for each. During this minute, they were also allowed to fill plastic bottles with water.[218]

118. Food was insufficient and inadequate, and the detainees became malnourished, leading to regular bouts of fainting. Detainees were given a loaf of bread per day to be divided between 10 soldiers, and a cup of soup or porridge two times per day. Reportedly, armed groups' members sometimes put machine oil into the soup or sand into the porridge, rendering it inedible. During four months of detention, most lost an average of 10 kilograms, some up to 30 kilograms. None of the detainees received treatment for wounds they had, or diseases they contracted, including tuberculosis.[219]

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211 Ibid.

212 HRMMU interview, 14 September 2016.

213 A Russian TV channel.

214 HRMMU interview, 11 October 2016.

215 HRMMU interview, 23 May 2017.

216 For examples of the accumulation of inadequate conditions reaching the threshold of inhuman treatment, see Communication No. 938/2000, *Siewpersaud et al v Trinidad and Tobago*, Views adopted by the Human Rights Committee on 29 July 2004, paras. 2.3-2.5 and para. 6.3; Communication No. 798/1998, *Howell v Jamaica*, Views adopted by the Human Rights Committee on 21 October 2003, paras. 2.9 and 6.2.

217 HRMMU interviews, 14 September, 11 October and 4 November 2016, and 23 May 2017.

218 HRMMU interviews, 18 November 2014 and 30 November 2016.

219 HRMMU interviews, 4 April, 23 May, 14 September, 11 and 12 October, and 4, 18 and .and 12ember 2016 November 2016 nting to ill-treatment. degrading.iolence, mock executions, threats.ning volunteer battalions o30 November 2016, and 27 June 2017.

119. All the soldiers were interrogated on the first day they were brought in, and each was questioned a few times on later days. Many were interrogated in a "torture room" near the archive; other detainees could hear their screams. Armed groups used torture during interrogations of Ukrainian soldiers to extract information or a confession, or to punish them for joining a battalion. According to the victims, the group of interrogators usually comprised two ex-officers of the Donetsk SBU working with the 'Donetsk people's republic', and were led by an officer who was treated as a senior official and wore a military uniform bearing the Russian Federation flag.[220]

120. For example, a member of the "Donbas" battalion recalled being interrogated twice in early September 2014, and believes the interrogators were former SBU and Russian Federation intelligence officers. According to him, they were well-prepared and, by the second interrogation, had his detailed biography, including all personal information (family, place of residence, etc.). He was beaten with batons and kicked during both interrogations, and from one session, the beating was so severe to his legs, knees, coccyx and kidneys, that he could not walk by himself for three days. He was also forced to face a wall while his interrogators shot around his arms and legs with an air gun.[221]

121. Another "Donbas" battalion member was interrogated four times and each time subjected to torture. An armed group member with the call sign Baton kicked punched and hit him with a truncheon all over his body, particularly his heels, shanks and thighs, causing severe pain. Unlike most captured soldiers, who were released by the end of 2014, this victim was released in February 2015.[222]

122. Based on the interviews with the victims, it appears that the battalion members from Donetsk, Luhansk or Kharkiv regions were beaten more severely than others when interrogated, because armed groups deemed them as "traitors".[223] Soldiers with tattoos in the form of a trident or who spoke Ukrainian were also beaten more.[224] For example, a member of "Donbas" battalion was interrogated two or three times and tortured by being forced to face a wall while being punched, kicked and hit with a truncheon in his back and legs. On 15 and 16 September 2014, after the victim revealed tattoos of the coat of arms and flag of Ukraine on his chest near his heart, guards with the call signs Adrenalin, Baton and Molchun punched him in the head and jaw, and struck his calves, buttocks and back with a truncheon. Afterwards, the victim was forced to do 1,000 squats.[225]

123. n addition to guards, other armed group members also had access to the detainees. Often drunk, members of armed groups would enter the basement and randomly beat any Ukrainian soldier, especially at night when the commanders were not present. Detainees were also regularly taken outside in groups of five to 10, forced to do 500 squats, and dig trenches or graves. They were beaten with sticks on their legs, subjected to mock executions or threatened to be sent to Donetsk airport to be used as human shields, or to Rostov or Kolyma, in the Russian Federation. After one such random beating, one detainee had a broken arm and another urinated blood.[226]

124. The detainees were gradually released in small groups between September and December 2014. Interviews conducted by OHCHR suggest that as of 31 December 2014, approximately nine Ukrainian soldiers captured in Ilovaisk remained detained in the seized building of the Donetsk SBU. Some 10 remained in detention till the end of summer 2015 and then released.[227] One soldier captured around Ilovaisk remained in detention by armed groups until he was released on 27 December 2017.

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220 HRMMU interviews, 11 October 2016 and 23 May 2017.
221 HRMMU interview, 23 May 2017.
222 HRMMU interview, 4 November 2016.
223 HRMMU interviews, 11 October 2016 and 23 May 2017.
224 HRMMU interview, 18 November 2014.
225 HRMMU interview, 14 September 2016.
226 HRMMU interviews, 11 October and 30 November 2016, and 23 May 2017.
227 HRMMU interview, 14 September 2016.

C. Detention facility in Ilovaisk

125. In mid-October 2014, 68 Ukrainian soldiers[228] were transferred from Donetsk city to Ilovaisk where they were forced to clean up debris, collect unexploded ordnance,[229] and reconstruct houses and multi-storey buildings – all without any protection or security equipment.[230]

126. The detention conditions in Ilovaisk were much better in comparison with the seized SBU building in Donetsk city. In Ilovaisk, detainees were held in the large military headquarters with access to running water. They were sufficiently fed and could cook for themselves in the morning and evening. Local residents brought them food and warm clothes. From there, the captured soldiers could contact their families for the first time. The Ukrainian soldiers were guarded by the "Somali battalion" of the armed groups[231] and the head of the detention facility had the call sign Angel.[232]

127. Around 20 October 2014, four Ukrainian soldiers originally from Zaporizhzhia were released, allegedly through negotiations led by an Afghanistan war veterans association, leaving 64 detainees in the facility. On 26 December 2014, the remaining 64 Ukrainian soldiers were transported by military trucks from Ilovaisk to Donetsk. They were then put on buses together with 14 Ukrainian soldiers who had been detained in the seized SBU building since August 2014, and taken to "neutral territory" north of Kostiantynivka. They were released simultaneously with members of the armed groups who had been detained by the Government.[233]

VII. Accountability for human rights violations and abuses and international humanitarian law violations during the Ilovaisk events

"I hope that eventually those who committed violations here will be finally held responsible or at least will be condemned by the international community."

A resident of Mnohopillia village

128. Four years after the Ilovaisk events, limited steps have been taken by the parties to the conflict to investigate the allegations of human rights violations and abuses and international humanitarian law violations, particularly those committed against civilians.

129. On 4 September 2014, the Verkhovna Rada (the Parliament) of Ukraine established a Temporary Investigative Commission into the Ilovaisk events,[234] which published an interim report on 20 October 2014. It only focused, however, upon military and political aspects of the operation. The full report was never released due to the early termination of the powers of the Commission by the Parliament.[235] In parallel, on 4 September 2014, the Prosecutor General's Office launched its own investigation into military aspects of the

[228] All, apart from the officers of the Ukrainian Armed Forces and the battalion members who were deemed "unreliable".

[229] Rule 95 of customary international humanitarian law prohibits that detainees be involved in the work that has a "direct connection with the operations of the war". The Third Geneva Convention provides that "unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature". Additional Protocol II provides that persons who are deprived of their liberty for reasons related to the armed conflict "shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population".

[230] HRMMU interview, 23 May 2017.

[231] Commander Givi – Mykhailo Tolstykh, died in 2017.

[232] HRMMU interview, 11 October 2016.

[233] On 26 December 2014, armed groups released 150 Ukrainian soldiers (including 78 soldiers captured around Ilovaisk), while the Government of Ukraine released 225 members of the armed groups.

[234] See footnote 51 of this report for more details.

[235] Letter of the Verkhovna Rada of Ukraine to HRMMU, dated 26 June 2017.

Ilovaisk operation. The results of this investigation were made public on 14 August 2017,[236] and were shared with the Office of the Prosecutor of the International Criminal Court.

130. The Prosecutor General's Office of Ukraine informed OHCHR that as of August 2017, there were no separate criminal proceedings investigating human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events. Some violations and abuses committed against Ukrainian soldiers in Ilovaisk, such as summary executions, torture and ill-treatment, are investigated as an element of two complex criminal proceedings that cover the whole period of the armed conflict in the east of Ukraine.[237] One criminal proceeding was launched against members of the armed groups of the 'Donetsk people's republic' and 'Luhansk people's republic' for "wide-scale and systematic violations of laws and customs of war" committed against civilians and captured soldiers in the context of the armed conflict in the east of Ukraine.[238] A second criminal proceeding was launched against officials and members of the Armed Forces of the Russian Federation for "launching and waging aggressive war against Ukraine which caused death of people and other grave consequences".[239]

131. Under the first proceeding, the investigation established the identity of one armed group member who, in the seized SBU building of Donetsk, guarded, ill-treated and tortured Ukrainian soldiers captured in Ilovaisk. An indictment was sent to court requesting a trial *in absentia* against this individual. Another member of an armed group was convicted on 1 June 2017[240] for guarding, ill-treating and torturing Ukrainian soldiers in the seized SBU building of Donetsk, on charges of creation of a terrorist group (article 258-3), planning, preparation and waging of an aggressive war (article 437) and violation of laws and customs of war (article 438), and sentenced to 10 years of imprisonment.[241]

132. Under the second criminal proceeding, charges have been brought against the First Deputy Chief of the General Staff of the Armed Forces of the Russian Federation, but the investigation has been suspended, as the suspect is at large.

133. The conduct of the Ukrainian forces is not within the scope of either investigation. Most of the human rights violations allegedly committed by Ukrainian forces against civilians described in this report have not been investigated. According to the Prosecutor General's Office of Ukraine, it is due to the fact that the alleged victims did not complain to the relevant State authorities. In the ongoing criminal proceedings, there is also little or no focus on the impact of the hostilities, including those in and around Ilovaisk in August 2014, on the civilian population. The lack of progress in investigating violations and abuses committed against civilians may be partially attributed to the fact that the Government of Ukraine does

[236] The official website of the Prosecutor General's Office of Ukraine, 14 August 2017. Available at: http://www. gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=213793 (lat accessed on 28 September 2017.

[237] Letter of the Prosecutor General's Office of Ukraine to HRMMU, dated 22 June 2017.

[238] The investigation is carried out under the following articles of the Criminal Code of Ukraine: 115 (murder), 146 (illegal deprivation of liberty or abduction), 258 (terrorist act), 258-3 (creation of a terrorist group or organization), 438 (violation of laws and customs of war).

[239] The investigation is carried out under the following articles of the Criminal Code of Ukraine: 110 (trespass against territorial integrity), 113 (sabotage), 114 (espionage), 258 (terrorist act), 258-3 (creation of a terrorist group or organization), 258-5 (financing of terrorism), 260 (creation of illegal armed formations), 263 (unlawful handling of weapons, ammunition or explosives), 402 (disobedience), 403 (failure to comply with orders), 407 (absence without leave from a military unit or place of service), 408 (desertion), 425 (neglect of duty in military service), 437 (planning, preparation and waging of an aggressive war), 426 (omissions of military authorities), 447 (mercenarism).

[240] Verdict of Sloviansk town-district court of Donetsk region, 1 June 2017 (available at: http://reyestr.court.gov.ua/ Review/ 66885637).

[241] According to the Office of the Prosecutor General of Ukraine, this overall proceeding covers the period since the beginning of the conflict till present. As of 25 June 2018, in total (not only linked to Ilovaisk events), 99 individuals, including 68 citizens of the Russian Federation, have been brought to criminal liability "for actions related to staging and carrying out an aggressive war against Ukraine, undermining basis of the national security of Ukraine, violations of laws and customs of war". Of them: 11 individuals were charged with violations of laws and customs of war.

not have access to the territory where they were committed. Furthermore, disruption of postal services between the Government-controlled and armed group-controlled territory, as well as arduous procedures to cross the contact line, make it difficult for civilians living in the territory controlled by the armed groups to report allegations of human rights violations and abuses and international humanitarian law violations to Government agencies. Access to civilians in territory controlled by armed groups is particularly important for the investigation of alleged violations committed by Ukrainian forces. These constraints, however, do not exempt the State of Ukraine from its duty to investigate allegations of human rights violations and abuses and international humanitarian law violations promptly and effectively to ensure that victims have access to justice and effective remedy.[242]

134. National legislation is yet to be adapted to the reality of armed conflict. The Criminal Code does not criminalize "war crimes" or "crimes against humanity" as such. Furthermore, Criminal Code provisions that could be relevant in the context of an armed conflict are very rarely, if ever, used in criminal proceedings; such as violence against population in an operational zone (article 433), ill-treatment of prisoners of war (article 434), or criminal offences against internationally protected persons and institutions (article 444). In addition, the Criminal Code foresees criminal responsibility for voluntarily rendering oneself prisoner of war (article 430), which may deter victims and witnesses to testify, particularly in the context of the Ilovaisk events.

135. Finally, the Criminal Code of Ukraine mainly focuses on individual criminal responsibility for physical commission of a crime or aiding, abetting or otherwise assisting the commission of the crime. Articles 426 (omission of military authority – failure to prevent or refer a case to investigation, or other failure to act by a person in authority which caused significant harm) and 426-1 (actions in excess of military authority) also foresee command responsibility, which includes elements of omission liability, and is of particular importance in the context of armed conflicts and the incidents described in this report. These articles however are mainly applied in cases when commanders commit crimes against their subordinates, but rarely regarding conduct against civilians.[243]

VIII. Conclusions and recommendations

136. Over four years of armed conflict in Ukraine have had a devastating impact on the lives of individuals and the human rights situation in the country. The Ilovaisk events of August 2014 are emblematic of human rights violations and abuses and international humanitarian law violations that have been repeatedly committed in the conflict in the east of Ukraine: shelling of residential areas resulting in civilian casualties, killings of civilians and other protected persons, unlawful detentions, enforced disappearances, and torture.

137. Cases documented by OHCHR and analyzed in this report suggest that during the hostilities in Ilovaisk, all parties to the conflict committed serious human rights violations and abuses, as well as international humanitarian law violations, with some possibly amounting to war crimes. The Ilovaisk events have left deep physical and emotional scars on the civilian population of the town and its vicinities, especially on those who were deprived of their liberty and subjected to torture and ill-treatment, their relatives, and those who lost and continue to search for loved ones.

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[242] While there have been no proceedings initiated into violations committed against civilians in context of the Ilovaisk events, according to the Office of the Prosecutor General of Ukraine, from 1 April 2014 to 31 May 2018, military prosecutors have been investigating 169 criminal cases of crimes perpetrated by elements of Ukrainian forces against civilians in the 'anti-terrorist operation' zone, including 45 cases of killings, causing bodily harm, torture or illegal deprivation of liberty; 3 rapes; 34 crimes related to property (thefts, robbery, armed assault or illegal appropriation of a vehicle), and 86 other crimes. Besides, the National Police have investigated 417 criminal cases (112 cases of murder, causing bodily harm, torture or illegal deprivation of liberty), 4 rapes, 160 crimes related to property (thefts, robbery, armed assault or illegal appropriation of a vehicle) and 138 other crimes.

[243] HRMMU meeting with Military Prosecutors, 2 June 2016.

138. In all its previous reports on the human rights situation in Ukraine, OHCHR has underscored the prevailing impunity for the human rights violations and abuses committed in the context of the armed conflict in Ukraine, which applies to the Ilovaisk events. While recognizing the efforts made by the Government of Ukraine to date, OHCHR is concerned that the investigation undertaken thus far does not reflect the full scale of human rights violations and abuses and international humanitarian law violations committed in Ilovaisk in August 2014, particularly against civilians.

139. Through impartially collecting and recording victim and witness accounts of human rights violations and abuses and international humanitarian law violations that occurred during the Ilovaisk events in August 2014, OHCHR seeks to contribute to realizing the right of victims, their relatives, communities and society as a whole to know the truth. This imperative is closely linked to access to justice, the right to obtain effective remedy and reparation. OHCHR has marshalled a reliable body of information, which is consistent with, and supported by numerous and credible sources, in order to trigger and facilitate a full-fledged criminal investigation by appropriate national and/or international judicial authorities into the events in Ilovaisk.

140. OHCHR recalls that accountability and access to justice are an essential element to foster long lasting peace and reconciliation. It is of grave concern that while some relevant draft laws have been developed,[244] more than four years after the beginning of the armed conflict, no national mechanism has been put in place by the Government of Ukraine to ensure that all victims receive prompt and adequate access to an effective remedy, including comprehensive rehabilitation, restitution, compensation, satisfaction and guarantees of non-recurrence. This particularly concerns civilian victims of the conflict, especially those injured and the families of those killed.[245]

141. The below recommendations include immediate and medium-term measures to prevent further violations and abuses of the rights to life, liberty, security and physical integrity, and to ensure that all perpetrators and those responsible for such acts are held accountable. Some particularly relevant recommendations made in the previous OHCHR public reports on the human rights situation in Ukraine are reiterated, as they remain to be implemented.

142. Recommendations to the authorities of Ukraine

(a) Government and Parliament to continue the process started in 2016[246] of ratifying the Rome Statute and amending the Criminal Code of Ukraine, which would allow for the domestic prosecution of international crimes.

(b) Law enforcement agencies to investigate effectively, promptly, thoroughly and impartially all allegations of human rights violations and abuses with due regard to the rights of the victims, regardless of the affiliation of the alleged perpetrator(s) and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

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[244] See OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2018, paras. 32-33.

[245] The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law require that States provide compensation for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (*a*) Physical or mental harm; (*b*) Lost opportunities, including employment, education and social benefits; (*c*) Material damages and loss of earnings, including loss of earning potential; (*d*) Moral damage; (*e*) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

[246] To solve the issue of complementarity of ICC to the national justice system, on 2 June 2016 Parliament amended article 124 of the Constitution of Ukraine. The amendments enter into force on 30 June 2019. The package of documents to enable ratification of the Rome Statute was developed and submitted to the President of Ukraine.

(c) Law enforcement agencies to ensure that the investigation of conflict-related cases of torture, ill-treatment, summary executions and killings is based on international standards and practice (e.g. Istanbul Protocol[247] and the Minnesota Protocol),[248] including through training relevant staff;

(d) Government to provide alleged victims of a human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation;

(e) In the context of the Minsk agreements,[249] the Government to commit not to grant amnesty to persons suspected, accused or convicted of international crimes, in particular war crimes, crimes against humanity or gross violations of human rights, recalling that amnesties are impermissible if they interfere with victims' right to an effective remedy, including reparation, or restrict victims' and societies' right to know the truth about violations of human rights and international humanitarian law;

(f) Parliament to reconvene the Temporary Investigative Commission, or convene another effective, independent and adequately empowered commission, to complete the investigation into the events that occurred in Ilovaisk and issue a public report on its findings;

(g) Government to ensure that documented human rights violations and abuses and international humanitarian law violations are comprehensively addressed in any future transitional justice processes, encompassing the full range of judicial and non-judicial measures, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof, as well as comprehensive national consultations, particularly with those affected by human rights violations and abuses;

(h) Government to ensure that judges, lawyers and other justice professionals hearing conflict-related cases are fully protected from threats, intimidation and other external pressures that seek to challenge and threaten their independence and impartiality;

(i) Cabinet of Ministers[250] to ensure the development and provision of timely, non-discriminatory and comprehensive assistance to all conflict-affected individuals, particularly injured civilians and victims of torture, including medical, psychological and legal services, livelihood support, and other multi-sectoral services, taking into account the specific needs of persons with disabilities.

143. To all parties involved in the hostilities in Donetsk and Luhansk regions, including armed groups of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic':

(a) Adhere to the ceasefire and implement all other commitments made under the Minsk agreements, in particular regarding withdrawal of weapons and disengagement of forces and hardware;

(b) In order to ensure greater protection of the civilian population and critical civilian infrastructure, cease the use of mortars and other indirect and imprecise weapons in civilian-populated areas, and refrain from placing soldiers, fighters or other military objects in civilian populated areas;

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[247] The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel,Inhuman or Degrading Treatment or Punishment. http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf

[248] The Minnesota Protocol on the Investigation of Potentially Unlawful Death, http://www.ohchr.org/Documents/Issues/Executions/MinnesotaProtocolInvestigationPotentiallyUnlawfulDeath2016.pdf

[249] The Minsk Protocol of 5 September 2014, Minsk Memorandum of 19 September 2014 and the Package of Measures for the Implementation of the Minsk Agreements of 12 February 2015.

[250] OHCHR understands that the key ministries involved would be the Ministry of Social Policy, the Ministry of Health, and the Ministry of Justice; however some involvement of other ministries and State bodies may be required.

(c) Ensure unimpeded access to OHCHR and other international independent observers to all places of deprivation of liberty;

(d) Adopt all necessary and reasonable measures to prevent and address human rights abuses by persons taking active part in hostilities:

- ensure that all such persons are properly trained on the key principles of international humanitarian law (distinction, proportionality and precaution) and norms and standards of international human rights law, especially the prohibition of torture;
- ensure that all forces are subject to adequate command and control;
- implement and publicize a system of reporting and investigating alleged human rights violations and abuses and international humanitarian law violations, that includes adequate protections for whistle-blowers;
- remove any individuals, including senior commanders, implicated in serious human rights violations and abuses or breaches of international humanitarian law from their ranks;

(e) Extend full cooperation to official investigations into human rights violations and abuses related to the conflict in the east of Ukraine, and ensure that individuals found to be responsible are held accountable before an independent judiciary.

(f) Allow unhindered access for humanitarian assistance and human rights monitoring and investigations in all parts of the territory under their control;

(g) Make public any known information on the whereabouts and fate of persons suspected of being subjected to enforced disappearance and missing persons, including the location of any graves, to ease the suffering of the victims' families and assist in identifying and holding accountable the perpetrators.

144. To the international community

(a) Use all diplomatic channels to press all parties involved in the conflict to end all hostilities;

(b) Emphasize the detrimental effect the conflict has had on the human rights situation, and call on the parties to strictly adhere to their commitments under the Minsk agreements, including an immediate and full ceasefire and the withdrawal of heavy weapons;

(c) Remind all parties to adhere to norms and standards of international human rights law and international humanitarian law obligations and principles, and in particular to guarantee the protection of civilians;

(d) Support all relevant actors in increasing their knowledge, understanding and use of international humanitarian law principles, as well as provisions of international human rights law;

(e) Urge all parties involved in the conflict to ensure thorough and effective investigations into all allegations of human rights violations and abuses, regardless of perpetrators' affiliation, as an essential element for sustainable peace and reconciliation;

(f) Assist the law enforcement agencies of Ukraine in developing their capacity to document and investigate human rights violations and abuses linked to conflict based on international standards, including Istanbul Protocol and the Minnesota Protocol; develop multi-level training sessions, adapted to the Ukrainian context and legislation, ranging from working-level professional staff (police, investigators, judges) to high-ranking officials and administrative staff;

(g) Provide assistance in the framework of the judicial reform to enable the judiciary to increase its capacity to address conflict-related cases;

(h) Support the Government of Ukraine in developing post-conflict mechanisms, including transitional justice processes, where applicable, that would encompass the full

range of judicial and non-judicial measures, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof, as well as comprehensive national consultations, particularly with those affected by human rights violations and abuses;

(i) Support human rights-centred confidence-building measures, human rights protection work, human rights monitoring and investigation, and activities aimed at conflict resolution on both sides of the contact line.

21 September 2018

English only

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 10
Technical assistance and capacity-building

Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine 13 September 2017 to 30 June 2018

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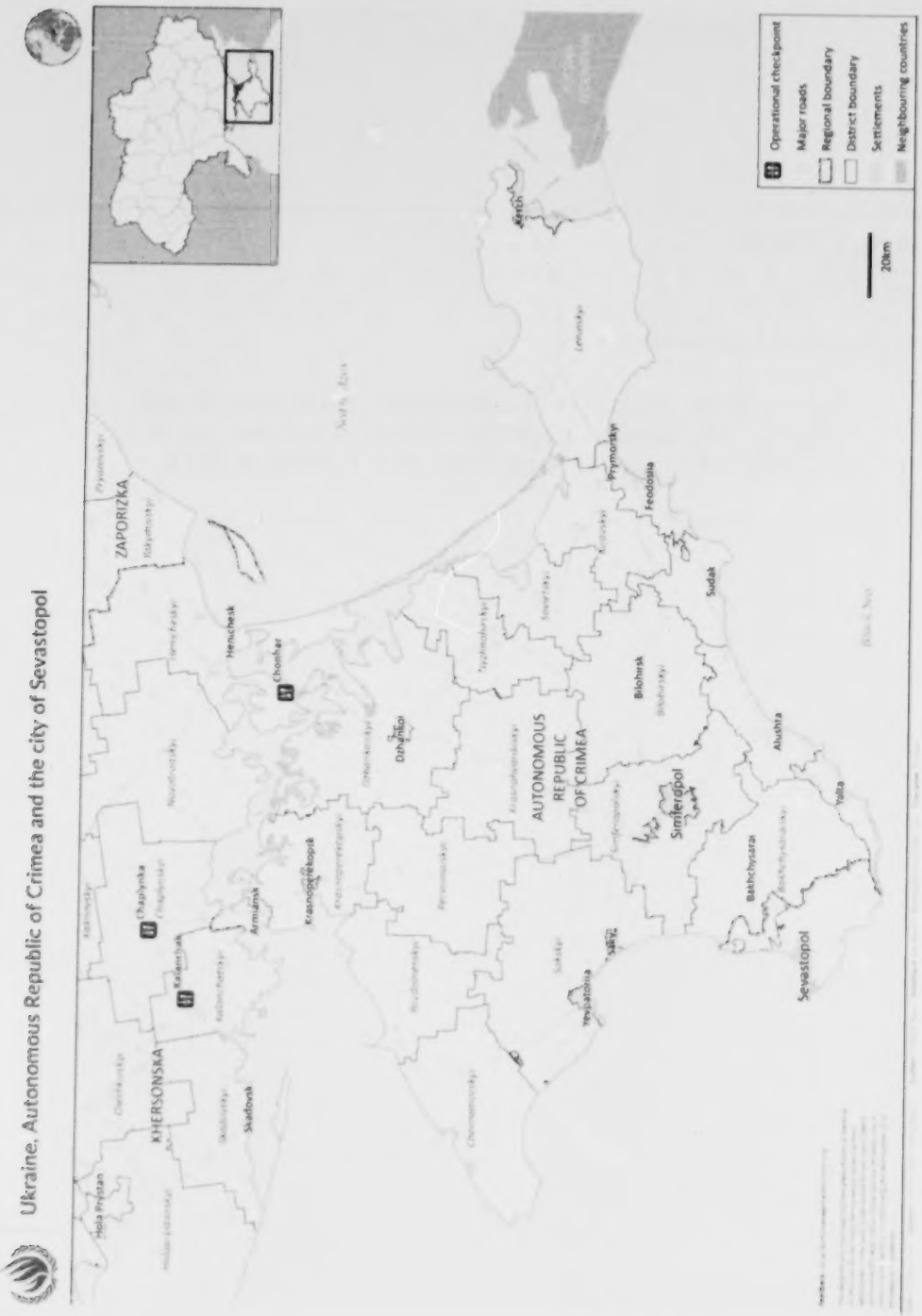
Ukraine, Autonomous Republic of Crimea and the city of Sevastopol
ZAPORIZKA
KHERSONSKA
AUTONOMOUS REPUBLIC OF CRIMEA
Sevastopol
Simferopol
Kerch
Feodosia
Yalta
Operational checkpoint
Major roads
Regional boundary
District boundary
Settlements
Neighbouring countries
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I. Executive summary

1. The present report is submitted pursuant to United Nations General Assembly resolution 72/190 which requests the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a dedicated thematic report on the "situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine" (hereinafter "Crimea"). This is the second report of OHCHR on Crimea mandated by the General Assembly.[1] This report analyzes cases of international human rights and humanitarian law violations documented in Crimea between 13 September 2017 and 30 June 2018.

2. During the reporting period, OHCHR documented 81 cases involving credible allegations of human rights violations and abuses, which affected 167 victims, including 34 women and 72 members of national minorities. Of the 81 documented cases, 62 occurred during the reporting period.

3. OHCHR findings confirm the continuing failure of the Russian Federation authorities, as the occupying power,[2] to adequately guarantee and protect a wide range of human rights in Crimea. The Russian Federation continued applying its legislation in Crimea, which included holding Russian Federation presidential elections in Crimea on 18 March 2018, contrary to the international humanitarian law obligation to respect the laws of the occupied territory.[3] Systemic problems requiring urgent measures include the absence of impartiality in the administration of justice; restrictions on the exercise of fundamental freedoms, including actions to prevent or suppress criticism and dissent; and a general lack of accountability for human rights violations committed by state agents. Crimean Tatars continued to be disproportionately affected by police raids and prosecuted under terrorism and extremism-related offences in proceedings falling short of human rights standards. From 1 January 2017 to 30 June 2018, 86 per cent of the 95 property searches or raids documented by OHCHR affected Crimean Tatars, indicating a pattern that suggests intent in targeting the group.

4. According to information collected by OHCHR, due process and fair trial rights of 94 individuals were violated by state agents of the Russian Federation in Crimea, including judges, prosecutors, investigators, the Federal Security Service of the Russian Federation ("FSB") and police. Several convictions sanctioned political dissent and appeared to be designed to serve as warnings to others.

5. Prohibited practices, notably torture by electrocution and sexual violence, have been used, allegedly by state agents, against people in detention or in the time between their *de facto* deprivation of liberty and formal placement in detention. In seven cases, victims were ill-treated and sometimes tortured as punishment or to extort "confessions".

6. Among documented cases, 19 arbitrary arrests and detentions and four enforced disappearances occurred during the reporting period. In addition, in 11 cases of enforced disappearances, which occurred prior to the reporting period, the victims are still missing as of 30 June 2018. The Russian Federation authorities often either refused to register a case, or suspended previously initiated investigations. To date, no perpetrators have been brought to justice.

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[1] The first report of OHCHR on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) was issued pursuant to General Assembly resolution 71/205 and covered the period from 22 February 2014 to 12 September 2017. Available at http://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf ("OHCHR first Crimea thematic report").

[2] The main international instruments defining the obligations of an occupying power are the Regulations Respecting the Laws and Customs of War on Land, annexed to the Fourth Convention Respecting the Laws of War on Land signed in The Hague on 18 October 1907 ("Hague Regulations") and the Fourth Convention Relative to the Protection of Civilian Persons in Time of War signed in Geneva on 12 August 1949 ("Geneva Convention IV").

[3] Article 43, Hague Regulations; article 64, Geneva Convention IV.

7. The absence or lack of effective investigations cuts across all violations. Failure to ensure accountability creates a climate of impunity and denies victims access to justice and remedy.

8. The report raises allegations of violations of fundamental freedoms, including freedoms of peaceful assembly, expression, association, religion and movement. Peaceful assemblies, including single-person pickets, were prohibited or sanctioned. "Unauthorized" assemblies were repressed and their participants prosecuted. Three individuals calling for the return of Crimea under Ukrainian jurisdiction were sentenced to suspended prison terms. Courts imposed sanctions for posting or saving online content deemed "extremist". OHCHR documented continued interference in journalistic activity. Despite an April 2017 Order by the International Court of Justice ("ICJ") requiring that the Russian Federation refrain from imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, the Mejlis, a traditional organization of the Crimean Tatar people, is still banned in Crimea.

9. As of 30 June 2018, the number of registered religious organizations in Crimea was down by 45 per cent in comparison with the pre-occupation period. Movement across the Administrative Boundary Line (ABL) diminished by 35 per cent between 2015 and 2017, in large part due to the severing of economic and trade links between mainland Ukraine and Crimea. Fear of arrest also created apprehension to cross the ABL, effectively impeding freedom of movement.

10. In violation of international humanitarian law, 12,000 men from Crimea have been conscripted into the Russian Federation army since 2015, and Ukrainian citizens have been forcibly transferred to the Russian Federation or deported to mainland Ukraine.

11. The right to property continued to be violated through arbitrary court-ordered confiscations. On the other hand, the authorities in Crimea have supported the right to housing of formerly deported people through land plot allocations.

12. According to the Russian Federation statistics, in 2017/2018, the number of children educated in the Ukrainian language declined by 14 per cent in comparison with the previous academic year. Assimilation in a predominantly Russian-speaking environment and various deterring factors explain this persistent decline. According to the Russian Federation statistics, the use of Crimean Tatar in public education has remained stable.

13. The situation of drug-users has been aggravated by the absence of a viable alternative to opioid substitution therapy (OST), which was banned following Crimea's occupation and imposition of the laws of the Russian Federation. This has had wide public health ramifications linked, notably, to the spread of sexually-transmitted diseases such as HIV-AIDS.

14. Ukraine has a continuing obligation to use all the legal and diplomatic means available to ensure respect for human rights in relation to the population of Crimea. Persons originating from Crimea, including displaced persons, enjoyed limited access to public services in mainland Ukraine, in particular banking services, civil registration and identification documents. This is rooted in discriminatory Ukrainian legal provisions, arbitrary application of legislation and, occasionally, prejudiced attitudes towards persons originating from Crimea.

II. Mandate and Methodology

15. General Assembly resolutions 68/262, 71/205 and 72/190 prescribe that Crimea is a territory of Ukraine under the temporary occupation of the Russian Federation. The Russian Federation in Crimea is bound by international instruments defining the obligations of an occupying power,[4] as well as international human rights law. Resolution 72/190 of 19

[4] According to article 4 of Geneva Convention IV, protected persons are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

December 2017 also invites the United Nations Secretary General "to seek ways and means" to ensure access for human rights monitoring mechanisms to Crimea and urges the Russian Federation to ensure "proper and unimpeded access" of international and non-governmental human rights organizations to Crimea.

16. On 6 March 2018, to implement resolution 72/190 and collect information for the report mandated by the General Assembly, OHCHR transmitted a note verbale to the Permanent Mission of the Russian Federation, referring to the relevant General Assembly resolutions and indicating the intention to conduct a mission in Crimea in April 2018. On 15 March 2018, the Permanent Mission of the Russian Federation responded that the Russian Federation did not "recognize or consider itself bound" by the aforementioned resolutions and was willing to host missions undertaken "in full compliance with the procedures applied for visiting the territory of the Russian Federation."

17. Given those conditions, OHCHR was not in a position to conduct a mission to Crimea in line with resolutions 68/262, 71/205 and 72/190. Therefore, the report is based on remote monitoring conducted by the Human Rights Monitoring Mission in Ukraine (hereinafter "HRMMU") from its offices in mainland Ukraine, and regular fact-finding missions in Ukraine. During the reporting period, OHCHR conducted 197 interviews and meetings (with victims, witnesses, relatives of victims, lawyers, and government officials) as well as site visits relating to the human rights situation in Crimea. Unless otherwise specified, the figures contained in this report relate to the cases documented and verified by HRMMU through its specific methodology, in line with OHCHR directives.[5] As such, this report does not provide an exhaustive overview of human rights violations perpetrated in Crimea during the period under review. OHCHR prioritizes protection of its sources from potential reprisal.[6]

III. Civil and Political Rights

A. Administration of justice and fair trial rights

18. In the period under review, OHCHR documented 39 cases where due process and fair trial guarantees prescribed under international human rights and humanitarian law were disregarded by Russian Federation state representatives in Crimea, including judges, prosecutors, investigators, police and FSB officers, affecting 94 individuals. These violations were documented in criminal and administrative proceedings.

19. At least 10 people were convicted pursuant to Russian Federation laws applied to acts committed before the occupation, in violation of the principle of legality and despite the obligation for an occupying power to maintain the penal legislation in force in the occupied territory and the prohibition to arrest, prosecute or convict protected persons for acts committed or opinions expressed before the occupation.[7] Half of the sentences retroactively implementing Russian Federation law penalized social media posts allegedly containing symbols, slogans or statements of organizations banned in the Russian Federation or materials considered as extremist.[8] The other five sentences involved Crimean Tatar men who allegedly took part in "mass disturbances" on 26 February 2014,[9]

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[5] *See* Training Manual on Human Rights Monitoring, Chapter 7 "Gathering contextual information", OHCHR, 2001 (under revision), available on the website of the Office of the High Commissioner for Human Rights:
http://www.ohchr.org/EN/PublicationsResources/Pages/MethodologicalMaterials.aspx.

[6] *See* OHCHR first Crimea thematic report, *supra*, paragraphs 30-35.

[7] Article 70, Geneva Convention IV.

[8] The Federal List of Extremist Materials was introduced by Federal Law No. 114-FZ *"On Combating Extremist* Activities" (25 July 2002).

[9] On 26 February 2014, during a rally in Simferopol pro-Ukrainian and pro-Russian protesters faced off, leading to a stampede and the death of two pro-Russian demonstrators. The defendants were accused of using force against pro-Russian demonstrators: fighting, throwing glass bottles and other heavy objects, using tear gas and pushing them with their weight.

prior to the *de facto* implementation of Russian Federation legislation in Crimea on 18 March 2014.[10]

20. Arrests and convictions sometimes appeared to pursue the objectives of penalizing political dissent and seemed designed to serve as warnings to others. On 14 March 2018, a Crimean farmer with pro-Ukrainian views was fined and sentenced to three years and five months in prison for unlawful possession of firearms and explosives. They were reportedly found in his home as it was searched shortly after the accused displayed a Ukrainian flag and a sign in his yard paying tribute to victims of the 2014 Maidan protests in Kyiv.

21. Defendants facing terrorism or extremism-related charges were pressured into waiving their privately-hired lawyers in exchange for promised leniency. Three Crimean Tatar defendants cancelled the contract with their lawyers after being prompted to do so by FSB officers and warned, through their family members, that having "pro-Ukrainian" counsels would damage their defense.[11] A man accused of planning a terrorist act terminated the contract with four privately-hired lawyers after the prosecution made it a condition for a plea bargain.[12] In another case, the lawyer of a Crimean Tatar man accused of spitting at a police officer during a house search was threatened by an investigator for "actively" defending his client. The investigator warned the lawyer he would "lose his license" and that it was a "matter of time" before he became a defendant himself.[13]

B. Right to physical and mental integrity

22. State agents of the Russian Federation in Crimea continued applying prohibited practices against people in detention or in the time between their effective deprivation of liberty and placement in detention. OHCHR documented seven cases, which occurred during the reporting period, where victims were ill-treated and sometimes tortured as a punishment, to extort confessions or to obtain specific information. The alleged perpetrators were members of the Russian Federation FSB and police in Crimea. The Geneva Conventions of 1949, their Additional Protocols of 8 June 1977 and applicable international human rights law[14] prohibit torture and other cruel or inhuman treatment and outrages upon individual dignity.

23. On 13 September 2017, following a search of his home, a Crimean Tatar man was arrested by the FSB.[15] He was held *incommunicado* for more than a day in the FSB premises in Simferopol, tortured, including by electric shock, and threatened with sexual violence to make incriminating statements against himself and others. On 14 September, the victim was left at a bus station in Simferopol. No formal record of his arrest was made and no official charges were brought against him.

24. On 23 January 2018, FSB officers tortured a Crimean Tatar man suspected of extremism inside a minibus on the way to their headquarters in Simferopol. Although the victim's physical injuries were properly documented by doctors and forensic experts, the Russian Federation Investigative Committee refused to open a criminal case, claiming the absence of *corpus delicti*.[16]

25. On 1 March 2018, Crimean police officers reportedly tortured a man to obtain the passwords to his social network accounts. During the court hearing, the judge dismissed the victim's torture complaint, stating it "goes beyond the merits of the case".[17]

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[10] OHCHR first Crimea thematic report, *supra*, paragraph 26.
[11] HRMMU interview, 13 October 2017.
[12] HRMMU interview, 2 March 2018.
[13] HRMMU interview, 30 November 2017.
[14] The Russian Federation is a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
[15] OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2017, paragraph 138.
[16] HRMMU interview, 14 April 2018.
[17] HRMMU interview, 19 March 2018.

26. Detainees were often held in conditions amounting to cruel, inhuman or degrading treatment. In the Simferopol pre-trial detention center, overcrowded cells have necessitated sleeping schedules. At times, detainees have been denied food and water before being taken to court hearings or access to necessary medicine.[18] The Ombudsperson of Crimea has acknowledged an acute lack of medical personnel in penitentiary institutions jeopardizing access to medical care for detainees.[19] In addition, as of 30 June 2018, at least three Crimean residents detained in the peninsula or the Russian Federation—Oleh Sentsov, Volodymyr Balukh, and Emir-Usein Kuku—were on a hunger strike, raising further health concerns. Under international humanitarian law, detained protected persons must enjoy standards of food and hygiene sufficient to keep them in good health, and must receive the medical attention required by their state of health.[20]

C. Right to liberty and security

27. The right to liberty and security ensures that subjects of a State can pursue their daily activities without harassment or apprehension of being restrained without any lawful basis. It includes two key components: freedom from arbitrary arrest or detention; and protection from enforced disappearance.

1. Arbitrary arrests and detentions

28. The arrest or detention of an individual is arbitrary where there is no reasonable suspicion that they committed or planned to commit a crime or where there has been no due process of law. Arbitrary detention is strictly prohibited under international humanitarian law[21] and international human rights law.[22] Unlawful confinement of a protected person constitutes a grave breach of the Fourth Geneva Convention (article 147).

29. Eleven arrests taking place outside any legal framework were documented during the reporting period. In those cases, detention records often include a fictitious date of arrest preceded by a period of *incommunicado* detention during which the authorities concealed information about the whereabouts of the victim from relatives and lawyers. This also amounts to an enforced disappearance. During this period, torture and ill-treatment is often used to obtain specific information or to extract filmed confessions. In one case documented during the period under review, a judge approved a guilty plea agreement despite evidence that the accused had been unlawfully detained several days prior to the documented date of arrest. During the period preceding official arrest, he was tortured and subjected to a mock execution.[23]

30. Justifications underpinning the arrests and detentions of alleged members of terrorist or extremist groups often provided little evidence that the suspect posed an actual threat to society by planning or undertaking concrete actions. On 11 October 2017, FSB arrested six Crimean Tatar men for alleged membership in *Hizb ut-Tahrir*, an organization banned in the Russian Federation as it is considered "terrorist". The evidence presented in the bill of accusation mentioned three meetings ("*sokhbets*") at a mosque, during which the defendants discussed world-wide political developments.[24]

31. Crimean Tatars were disproportionately subjected to police and FSB raids of their homes, private businesses or meeting places, often followed by arrests. OHCHR documented 57 searches in 2017, of which 53 concerned Crimean Tatar properties, and 38 searches in the first half of 2018, of which 30 concerned properties of Crimean Tatars. The

[18] HRMMU interview, 23 December 2017.
[19] Report of the Ombudsperson of the Republic of Crimea on the human rights situation in Crimea in 2017, pp. 56-59.
[20] Article 76, Geneva Convention IV.
[21] Rule 99, Customary International Humanitarian law.
[22] Article 9, International Covenant on Civil and Political Rights ("ICCPR").
[23] HRMMU interview, 2 March 2018.
[24] HRMMU interview, 30 November 2018. All defendants were detained and awaited their trial as of 30 June 2018.

number of searches carried out in the first six months of 2018 has nearly tripled compared to the similar period in 2017, when 14 searches were documented, 11 of which concerned Crimean Tatars. While the searches were usually carried out on the basis of court warrants, some were conducted without presenting any authorization or portrayed as a 'house observation', an investigative activity not requiring judicial supervision when it is conducted with the consent of the property owner. The raids often involved excessive use of force and an extent of searches not warranted by circumstances, going beyond the lawful objective of preventing crime and protecting the rights and freedoms of others.[25]

2. Enforced disappearances

32. OHCHR conducted a review of cases of individuals who went missing in Crimea from 3 March 2014 to 30 June 2018, and found that at least 42 persons were victims of enforced disappearances, including four during the reporting period. The victims (38 men and 4 women) include 27 ethnic Ukrainians; 9 Crimean Tatars; 4 Tajiks; 1 person of mixed Tatar-Russian origins; and 1 Uzbek. Twenty-seven were released after being illegally detained for periods lasting from a few hours to two weeks; twelve are missing and feared dead by their relatives; two are held in custody; and one was found dead.

33. The majority of disappearances occurred in 2014, when 28 persons went missing with allegations of involvement of the "Crimean self-defense" in most cases. Two enforced disappearances occurred in 2015, three in 2016, seven in 2017, and two in 2018. Victims of enforced disappearance were predominantly pro-Ukrainian activists united in their opposition to the March 2014 referendum and their support of the Ukrainian armed forces stationed on the peninsula (22 cases). Other victims include five individuals with links to Crimean Tatar groups or institutions, including the Mejlis; four journalists; one Ukrainian serviceman; one Muslim Ukrainian; one Greek-Catholic priest; five migrants from Central Asia; and three individuals with no known affiliations.

34. The disappearances were often attributed to more than one perpetrator. Thus, in relation to the 42 documented cases, 76 perpetrators were identified, including representatives of pro-Russian formations and Russian Federation military and security structures. Specifically, disappearances were attributed to members of the "Crimean self-defense" (23 attributions), the FSB (23), the Armed Forces of the Russian Federation (10), Cossack groups (8), the Russian Federation police (6), the "Russian Unity" political party (4) and the "Crimea Liberation Army" (2). In cases documented during the reporting period, the FSB was cited as the most common perpetrator, unlike at the beginning of the occupation when the "Crimean self-defense" was most frequently identified as the perpetrator. Victims often described physical violence and psychological pressure inflicted during *incommunicado* detentions.

35. In none of the cases documented have perpetrators been brought to justice. Seven persons identified by OHCHR as victims of enforced disappearances are listed by Russian Federation authorities as "missing". In relation to at least ten victims, the authorities have either refused to register a case or suspended previously initiated investigations. The lack of progress in the investigations raises questions about their effectiveness.

D. Freedom of movement

36. International human rights law guarantees liberty of movement and free choice of residence.[26] Restrictions are permissible if they are provided by law, proportionate, and justified by a legitimate aim.

In contravention of General Assembly resolutions 68/262, 71/205 and 72/190, the Russian Federation introduced a state border at the ABL between mainland Ukraine and Crimea. This border and the absence of public transportation between Crimea and mainland Ukraine

[25] HRMMU interview, 10 November 2017.

[26] Article 12, ICCPR.

continued to undermine freedom of movement to and from the peninsula, affecting mainly the elderly, people with limited mobility and young children.

37. In 2017, 2,525,530 ABL crossings were registered in both directions, which is 35 per cent less than in 2015.[27] The severing of economic and trade links between mainland Ukraine and Crimea may explain this decrease, as well as apprehension about crossing the ABL due to fears of harassment or arrest.[28] For example, on 8 November 2017, seven Crimean Tatar women, all spouses of men under criminal prosecution in Crimea, were stopped by Russian Federation law enforcement officers as they were returning from mainland Ukraine to Crimea.[29] They were released after seven hours of detention and interrogations. On 8 March 2018, a Crimean Tatar man was detained for 12 hours by the FSB and subjected to physical violence in order to force him to testify against Crimean Tatar acquaintances suspected of being members of "radical" Muslim groups.[30]

38. Ukrainian legislation restricts access to Crimea to three designated crossing points in Ukraine's Kherson region and imposes sanctions, including long-term entry bans, in case of non-compliance with this requirement.[31] Crimean residents lacking Ukrainian passports who only possess Russian-issued Crimean travel documents which are not recognized by Ukrainian authorities often faced difficulties when crossing the ABL into mainland Ukraine. This situation encourages reported practices of bribery, which also occurs in the context of transportation of personal items. Although Government-imposed restrictions on transfer of personal items across the ABL have been repealed,[32] travelers occasionally report instances when Ukrainian border guards refused to allow personal belongings to be transferred across the ABL.

E. Freedom of thought, conscience and religion

39. As of 30 June 2018, 750 religious organizations were registered in Crimea and 103 in Sevastopol. Those figures remain 45 per cent below the number of religious organizations operating prior to Crimea's occupation, indicating that there has been no improvement from the previously reported figure in 2017.[33] The obligation to register, deriving from Russian Federation legislation, applies to all legal entities wishing to continue operations.[34]

40. The Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) did not seek registration under Russian Federation law and claims persecution in Crimea. In 2017, it initiated lawsuits to contest actions against its property or obtain recognition of the right to conduct church services in premises to which access is currently denied. While two lawsuits were declared inadmissible,[35] in one case the court accepted that the UOC-KP had *locus standi* to claim property rights over a building located on a military base in Sevastopol and used as a church until 2014. However, the court rejected the request on its merits, declaring that the Russian Federation Ministry of Defense had legal title to the military base, including the contested building on its premises, and was under no obligation

[27] There were 3,920,936 crossings in 2015 (source: Permanent Representative of the President of Ukraine to the Autonomous Republic of Crimea).

[28] HRMMU interviews, 3 and 15 January 2018.

[29] HRMMU interview, 7 June 2018.

[30] HRMMU interview, 1 June 2018.

[31] Access to Crimea is only legal through ABL crossing points in the districts of Kalanchak, Chaplynka and Chonhar.

[32] Resolution no. 1035 of 14 December 2015 was repealed on 14 June 2017.

[33] On 1 January 2014, 2,220 religious organizations were operating in the Crimean peninsula, of which 1,546 were registered. OHCHR also recalls that on as of 4 September 2017, 722 religious communities were registered in Crimea and 96 in Sevastopol.

[34] OHCHR first Crimea thematic report, paragraphs 136-145.

[35] Judgements of the Arbitration Court of the Republic of Crimea (18 September and 27 November 2017).

to grant access.[36] In 2018, 9 UOC-KP parishes allegedly continued to operate in Crimea, down from 20 parishes before the beginning of occupation.

41. The Crimean Tatars have traditionally been affiliated to the Spiritual Administration of Crimean Muslims, which re-registered in 2015 and is treated favorably by the authorities. Crimean residents who are perceived as sympathizers of unauthorized Muslim groups, such as *Hizb ut-Tahrir* and *Tablighi Jamaat*, face prosecution.[37]

42. Registration in accordance with Russian Federation regulations did not preclude interferences in the activities of religious organizations. The "Church of the Voice of Hope", an evangelic protestant denomination in Bakhchysarai, re-registered under Russian Federation legislation. However, following FSB threats and intrusive inspections conducted by various government agencies, the Church stopped delivering worship services in December 2017.[38]

F. Freedoms of opinion and expression

43. Reflecting a continuing trend, Russian Federation authorities in Crimea placed excessive limitations on the freedoms of opinion and expression. In accordance with human rights law, the exercise of fundamental freedoms may only be subjected to restrictions provided by law and necessary for the respect of the rights or reputations of others, or the protection of national security, public order, public health or morals.

44. Three individuals advocating for the return of Crimea to Ukraine or expressing the view that Crimea remains a territory of Ukraine were sentenced by courts in Crimea during the reporting period on the basis of Russian Federation legislation criminalizing public calls encouraging separatism. This runs counter to the concluding observations of the Human Rights Committee, which called on the Russian Federation to apply anti-separatism legislation in a manner consistent with article 19 of the ICCPR, and not to silence individuals critical of the State's foreign policy, including with regard to Crimea.[39]

45. The right to express one's views has been curtailed through court-imposed sanctions against individuals posting information, pictures or saving social media content deemed "extremist". On 15 March 2018, the Supreme Court of Crimea upheld the conviction of a Crimean woman found guilty of inciting hatred for a *Facebook* post criticizing the Russian Federation, its army and historical characters.[40]

46. Based on interviews with current and former journalists from Crimea, OHCHR noted continued interference in journalistic activity and a lack of independent reporting. Several interlocutors mentioned widespread self-censorship and filtering of content prior to publication.[41] An undercover reporter monitoring trials of Crimean Tatars accused of terrorism was questioned by police about his journalistic activity. He was "warned" about the consequences of "wandering around" court hearings and let go after writing an explanatory note. The police did not present any grounds for stopping or questioning him.[42]

G. Freedom of peaceful assembly

47. During the period under review, the right to hold and participate in peaceful assemblies continued being selectively protected. While Russian Federation authorities in Crimea have allowed some public events to take place, including national celebrations or

[36] Judgment of the Arbitration Court of the city of Sevastopol (28 July 2017).
[37] HRMMU interview, 10 November 2017.
[38] HRMMU interview, 5 December 2017.
[39] UN HRC, Concluding observations on the seventh periodic report of the Russian Federation, CCPR/C/RUS/CO/07, 28 April 2015, paragraph 20.
[40] HRMMU interview, 26 March 2018.
[41] HRMMU interview, 15 January 2018.
[42] HRMMU interview, 27 November 2017.

commemorations,[43] they arbitrarily banned or sanctioned the conduct of other processions, assemblies or meetings of a non-violent nature in violation of applicable human rights law.

48. Under Russian Federation legislation applied in Crimea, most public events require prior authorization by local authorities. Conduct of unauthorized assemblies was thus regularly sanctioned. On 20 September 2017, a court fined a Crimean Tatar man for organizing a protest against the expropriation of land in Sevastopol. The local authorities had previously denied the request to hold this assembly, citing plans to hold another event on the same date and location. In the case of simultaneous assemblies at the same place and time, it is good international practice to allow, protect and facilitate all events, whenever possible.[44]

49. According to Russian Federation legislation, one-person pickets do not require pre-authorization. However, between December 2017 and March 2018, courts in Crimea fined 80 Muslim men, who, on 14 October 2017, had conducted single-person pickets to protest the arrests of other Muslim men, mostly Crimean Tatars, for alleged membership in terrorist or extremist organizations.[45] The courts based their decisions on jurisprudence of the Constitutional Court of the Russian Federation providing that when several one-person pickets are held simultaneously and are similar to one another with "sufficient obviousness", they may be considered as one public picket carried out by a group of individuals requiring prior authorization.[46] OHCHR notes that the judgments offer no evidence that single picketers had harmed national security, public safety, public order, public health or morals, or the rights and freedoms of others, which are the only permissible grounds to restrict the right to peaceful assembly under international human rights law.

50. In October 2017, 13 Crimean municipalities rejected requests to hold assemblies advocating for the recognition of the human rights of the LGBTI community based on Russian Federation legislation applied in Crimea prohibiting propaganda of "non-traditional sexual relations". The jurisprudence of the Human Rights Committee[47] and the European Court of Human Rights ("ECtHR")[48] has established that the refusal to hold a peaceful assembly on the ground of sexual orientation infringes the right to free assembly and the prohibition of discrimination.

H. Freedom of association

51. Due to a deteriorated human rights environment and declining freedoms, informal civil society networks have sprung up. They have chosen not to register to avoid oversight and control of their activities by the authorities.

52. In response to arbitrary arrests and prosecutions of Crimean Tatar activists, relatives of detained Crimean Tatars created a civic group "Crimean Solidarity" operating as a platform to exchange information, mobilize support, and reach out to lawyers and human rights defenders.[49] In 2017, the network launched a fundraising campaign - Crimean marathon - to cover fines imposed on Crimean Tatars holding protests, filming police raids or publishing critical social media posts. On 27 January 2018, a Crimean Solidarity meeting in Sudak attended by 150 people was disrupted by law enforcement officers allegedly

[43] For example, the holiday of spring and fertility ("Hydyrlez") and the commemoration of the Crimean Tatar deportation were held on 5 May and 18 May 2018.

[44] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 30.

[45] The administrative fines ranged from 10,000 RUB (165 USD) to 15,000 RUB (250 USD). Three guilty verdicts were subsequently set aside on appeal.

[46] Decision of the Constitutional Court of the Russian Federation, 14 February 2013 (https://rg.ru/2013/02/27/mitingi-dok.html).

[47] HRC, Communication No. 1873/2009, *Nikolai Alekseev* (2013).

[48] ECtHR, Bączkowski and Others v. Poland (2005).

[49] Another non-registered initiative, "Crimean Childhood", was launched to support children of detained activists.

searching for drugs and weapons. The activists were questioned and photographed but no prohibited items were found.

53. The Ukrainian Cultural Centre was set up in May 2015 to maintain and promote Ukrainian identity and culture after Crimea's occupation. In August 2017, it launched *Krymskyi Teren*, a monthly Ukrainian language newspaper which published nine issues until 30 June 2018. Contributors acknowledged applying self-censorship and sometimes using pseudonyms.[50] Members of the Centre were warned by law enforcement not to engage in ill-defined "extremist activities" and sometimes threatened; as a result, the Centre only had three active members in 2018.

54. The Mejlis, viewed by many Crimean Tatars as a self-governing body comprising elected representatives of the Crimean Tatar people, remains banned for extremism in Crimea and the Russian Federation despite a 2017 ICJ Order requiring that the Russian Federation "*Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis*"[51]

55. Virtually all LGBTI initiatives that had existed in Crimea before 2014 have disappeared from the peninsula by 2018. NGOs, which continue working on access to healthcare among vulnerable groups, have found it impossible to advocate for better access to healthcare for LGBTI people because of the fear of persecution.[52] LGBTI residents of Crimea face difficulties with finding a safe environment for gatherings because of the overall hostile attitude towards the manifestation of LGBTI identity.[53] OHCHR received information that the last public gathering conducted by LGBTI activists in Crimea took place in 2013.[54]

56. OHCHR stresses that the possibility to share one's beliefs in a community with others, as guaranteed by the freedom of association, is essential as it contributes to the realization of other fundamental freedoms, such as the freedoms of expression, thought, conscience and religion.[55]

I. Voting rights

57. On 18 March 2018, the Russian Federation presidential election was held in Crimea, in violation of General Assembly resolutions reaffirming its status as a territory of Ukraine.

58. OHCHR received reports of pressure on public sector employees to vote in order to ensure high turnout. A Crimean Tatar teacher from Krasnoperekopsk was reprimanded and threatened with dismissal by the principal of the school for her refusal to vote. Some voters stated their employers required them to photograph themselves at the polling station as evidence of their participation. Two weeks before the vote, a member of an unregistered anarchist group from Sevastopol who had announced on a social networking site plans to hold an election boycott rally was sentenced to 11 days of administrative arrest for an earlier post allegedly containing extremist content.[56]

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[50] HRMMU interviews, 2 October 2017 and 9 October 2017.

[51] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all forms of racial discrimination (Ukraine v. Russian Federation), Request for the indication of provisional measures, 19 April 2017, General List No. 166 ("Application, Ukraine v. Russian Federation"), paragraph 106.

[52] HRMMU meeting, 23 January 2018.

[53] HRMMU interviews, 12 January 2018 and 2 October 2017.

[54] HRMMU interview, 19 October 2017.

[55] ECtHR, *Chassagnou and Others v. France* (1999).

[56] HRMMU interview, 19 March 2018.

IV. Economic, Social and Cultural Rights

A. Rights to health

59. Despite the opening of new medical facilities and equipment upgrades, the general availability of healthcare services in Crimea remained inadequate. One fifth of positions in state hospitals were vacant on 1 January 2018.[57] In 2017, the number of doctors, which was already grossly insufficient, dropped by 2 per cent compared to 2016.[58] In addition, specific groups, such as intravenous drug-users, continued to be denied access to effective health treatment.

60. Four years after Russian Federation authorities interrupted the WHO-recommended opioid substitution therapy (OST) applied in Crimea prior to the occupation, health and social problems associated with long-term drug use have been aggravated. Without regular medical monitoring associated with the administration of methadone or buprenorphine in substitution for street narcotics, at least 806 patients fell out of treatment and prevention services in Crimea.[59] OHCHR recalls that States have the duty to protect and fulfill the right to health by making their healthcare system accessible for all, especially vulnerable and marginalized groups.

61. Criminal charges were pressed against advocates of substitution therapy in Crimea. One of them, an OST beneficiary from Simferopol who produced videos advocating for OST, fled Crimea in December 2017 after the police found buprenorphine, a drug used to fight addiction, in his apartment.[60]

62. Providing drug-users and other at-risk groups with access to efficient medical assistance has essential public health ramifications, notably linked to the spread of sexually-transmitted diseases such as HIV-AIDS. According to Russian Federation statistics, 18,110 cases of HIV infection were registered in Crimea (excluding the city of Sevastopol) from 1987 to 2017, of which over 5 per cent (1,006) were identified in 2017.[61] According to the Ukrainian authorities, at least 115 HIV-positive people have left the peninsula since the beginning of the occupation and turned to healthcare institutions in mainland Ukraine to obtain necessary treatment.

B. Property rights

63. Under international humanitarian law, private property cannot be confiscated under any circumstances.[62] Nevertheless, Crimea's occupation was followed by the confiscation of thousands of publicly and privately owned real estate assets declared to be "nationalizations". In Sevastopol, for example, over 1,800 privately-owned land plots, some with properties erected on them, have been confiscated since November 2014.

64. On 19 September 2017, the Supreme Court of the Russian Federation ruled in favor of a dispossessed land plot owner from Sevastopol contesting the legality of a court-ordered confiscation.[63] This decision triggered a series of judgments upholding the security of tenure of property owners. Thus, between November 2017 and March 2018, 304

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[57] Report of the Ombudsperson of the Republic of Crimea on the human rights situation in Crimea in 2017, p. 85.

[58] Following Crimea's occupation, the preexisting lack of public sector medical personnel was aggravated by the departure of doctors to the private sector. *See* OHCHR first Crimea thematic report, paragraphs 204-208.

[59] HRMMU interview, 15 February 2018.

[60] HRMMU interview, 15 February 2018.

[61] https://spid-crimea.ru/wp-content/uploads/2016/03/Статистика-2017.pdf. This is slightly below the 2016 numbers, given that 1,417 newly diagnosed cases of HIV infection were recorded in Crimea for the first nine months of 2016. *See* OHCHR first Crimea thematic report, paragraph 214.

[62] Articles 46 and 56, Hague Regulations.

[63] http://www.supcourt.ru/stor_pdf.php?id=1583148.

expropriation requests were rejected by first instance and appellate courts in Sevastopol. At the same time, judicial practice remained inconsistent, with 514 land plot confiscations approved during the same period.

65. According to information provided by the Russian Federation authorities in Crimea, progress was made in the long-standing issue of access to property for formerly deported people. Following their return from decades-long exile, Crimean Tatars settled spontaneously around the Crimean peninsula, constructing unauthorized dwellings. Individual land seizures evolved into organized forms of squatting having conflict potential. In August 2013, around 2,000 hectares were occupied by 56 unauthorized settlements involving an estimated 8,000 to 15,000 people.[64]

66. After March 2014, the Russian Federation authorities in Crimea adopted special legislation creating an electronic database of "land squatters" wishing to regularize their property situation.[65] Two audits enabled to identify 7,895 "real" applicants[66] while the rest were dismissed as "ghosts" or "fake squatters". Reportedly, as of October 2017, nearly 4,300 persons in the database (about 55 per cent) had received land plots free-of-charge. On 17 May 2018, the head of the Crimean Committee on Interethnic Relations announced plans to allocate an additional 1,700 land plots.[67] OHCHR notes that the property rights of the new landowners are not recognized under Ukrainian legislation, which considers all real estate transactions concluded in Crimea while under occupation, including such land allocations, as null and void.[68]

C. Right to education in native language

67. According to Russian Federation law applied in Crimea, Russian, Ukrainian and Crimean Tatar are the official languages of Crimea and can be used as languages of instruction. After the independence of Ukraine in 1991, Russian remained the predominant language of instruction in Crimea, a tendency that has been amplified following Crimea's occupation. In the 2017/2018 academic year, 97 per cent of children in Crimea were educated in Russian, up from 90.7 per cent in 2014.[69]

68. In the 2017/2018 academic year, instruction in Ukrainian was provided in one Ukrainian school[70] and 13 Ukrainian classes in Russian schools attended by 318 children. When Ukraine's education curriculum was last applied on the peninsula, in 2013/2014, there were 7 Ukrainian schools and 829 Ukrainian classes attended by 12,694 children. Reports of pressure from school administrations; assimilation in a predominantly Russian-speaking environment; the departure of thousands of pro-Ukrainian residents; and various deterring factors explain this rapid decline. One former teacher from Yalta stated that parents requesting Ukrainian language education for their children are put on lists handed over to the FSB.[71] The number of children learning Ukrainian as a regular subject, an elective course or within extracurricular activities in the current academic year reportedly constitutes 10,600 students.[72]

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[64] *See* "The integration of formerly deported people in Crimea, Ukraine: Needs assessment", OSCE/HCNM, August 2013, available at: https://www.osce.org/hcnm/104309?download=true.

[65] Law of the Republic of Crimea No. 66-3PK/2015 "On allocation of state and municipal land plots and certain issues of land relations", available at: http://www.crimea.gov.ru/textdoc/ru/7/act/66z.pdf.

[66] http://glava.rk.gov.ru/rus/index.htm/news/342796.htm.

[67] https://crimea.ria.ru/society/20180517/1114469971.html.

[68] Law of Ukraine No. 1207-18 "On the Protection of the Rights and Freedoms of the Citizens and the Legal Regime on the Temporary Occupied Territory of Ukraine", article 11 (5).

[69] Source: Ministry of Education of Ukraine.

[70] School No. 20 in Feodosiia.

[71] HRMMU interview, 12 October 2017.

[72] The Russian Federation authorities previously reported that 6,400 students were learning Ukrainian in 2017/2018, down from 12,892 in 2016/2017. These significant divergences between the reported figures raise concerns about the overall credibility of the statistics.

69. According to the statistics of the Russian Federation authorities in Crimea, the use of Crimean Tatar as a language of instruction has remained stable, with 5,835 Crimean Tatars educated in their native language in 2017/2018 and 5,551 in 2013/2014. There are however reports of discrepancies between the language status of a school and its language of instruction. For example, ninth graders in a Crimean Tatar school of the city of Bilohirsk were instructed in Russian language, while Crimean Tatar language was taught as an elective course after regular school hours.[73] In addition, OHCHR documented cases where the explicit requests of parents to use Crimean Tatar as the language of instruction for their children have remained unaddressed.[74] As of 30 June 2018, Crimea reportedly had 16 Crimean Tatar schools, up from 15 in 2014. Approximately 21,600 Crimean Tatar children learn their native language as a regular subject, an elective course or within extracurricular activities.

70. On 28 December 2017, the Ministry of Education of Crimea sent municipalities a communication outlining a "Road map on the choice of language in education"[75] offering a mechanism for parents to request native language education for their children. In particular, school administrations must inform parents of the right to choose a language of instruction, the possibilities of learning languages other than Russian, and the availability of staff to teach in different languages. OHCHR notes that this initiative could facilitate access to education in one's mother tongue provided it is implemented effectively, and recalls that on 19 April 2017 the ICJ delivered an Order on provisional measures requesting the Russian Federation to "*Ensure the availability of education in the Ukrainian language in Crimea*".[76]

V. Forced conscription

71. As an occupying power, the Russian Federation is bound to comply with international humanitarian law prohibiting compulsion of Crimean residents into its armed or auxiliary forces.[77] No pressure or propaganda aimed at securing voluntary enlistment is permitted. Forced conscription also adversely affects the enjoyment of human rights.

72. Yet conscription of Crimean residents into Russian Federation armed forces continued in 2018. Russian Federation rules provide for biannual enlistment campaigns, in spring and fall. The fall 2017 and spring 2018 campaigns in Crimea involved 2,400 and 2,800 male residents respectively.[78] An estimated 12,000 residents have been conscripted into the Russian Federation army since 2015.[79] A new practice of transferring drafted men from Crimea to the Russian Federation started in 2017 and continued in the 2018 spring campaign when about 25 per cent of conscripts were sent to military units in the Russian Federation.

73. Draft evasion is punishable under Russian Federation criminal law by up to two years' incarceration. While OHCHR has no information about any cases of court-ordered deprivation of liberty related to draft evasion, at least nine individuals were fined 20,000 or

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[73] HRMMU interview, 4 June 2018.

[74] HRMMU interview, 4 June 2018.

[75] http://monm.rk.gov.ru/file/scan01275220171228104654.pdf.

[76] Application, Ukraine v. Russian Federation, *supra*, paragraph 106. In its Concluding Observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation, the Committee on the Elimination of Racial Discrimination noted that it "appreciates the [Russian Federation] delegation's statement that the State party considers mandatory the Order of the International Court of Justice dated 19 April 2017", available at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnLhf979C%2fgtYtPXQ%2f%2b4tE7ukTT14m%2becJYUSHmqdz4u6Soz69fKsUApaoBE7r59t4YcZVsGOtqqYpufqZy1NxwQ8QOV1CFk6ZGavveEj24FrRWDQvojATkNJOzpbXKCQ%3d%3d, paragraph 19.

[77] Article 51, Geneva Convention IV.

[78] The first military draft of Crimean residents into the Russian Federation armed forces was conducted in April 2015. It involved 500 conscripts.

[79] Source: Ministry of Defense of the Russian Federation.

25,000 RUB (320 or 430 USD) for their refusal to serve.[80] Under Russian Federation legislation, conviction for draft evasion does not absolve from the obligation to undergo military service.

74. In another case in October 2017, a Feodosiia resident was summoned to a military draft commission and told to choose between enlisting or permanently leaving Crimea.[81]

VI. Illegal population transfers

75. Under international humanitarian law, forcible transfers as well as deportations of protected persons outside the occupied territory are prohibited. This rule applies regardless of the motive of the transfer or deportation.[82]

76. The Russian Federation court registry lists 512 deportation orders issued in Crimea and Sevastopol in 2017, of which at least 287 concerned Ukrainian citizens. Deportations of protected persons continued in 2018. On 2 February, 23 Ukrainian citizens working at a construction site in Crimea were deported for "illegal employment" and banned from entering Crimea for five years. They were fined and transferred to a temporary detention facility in the Russian Federation before being deported to mainland Ukraine. Court hearings were conducted expeditiously and in the absence of defense lawyers, in violation of fair trial guarantees.[83]

77. During the reporting period, OHCHR verified 13 cases where Ukrainian citizens detained in Crimea were transferred to the Russian Federation to stand trial or serve a sentence. The actual number is believed to be much higher, since Russian Federation authorities do not publicly report on the number of such transfers.[84] OHCHR continued receiving regular reports of torture and ill-treatment in Russian Federation penitentiary facilities.[85]

78. According to Russian Federation statistics, during the 2014-2017 period, 108,224 people changed their residency registration from Russian Federation regions to "the Republic of Crimea" or the city of Sevastopol, including 29,500 in 2017.[86] The Fourth Geneva Convention prohibits an occupying power to deport or transfer parts of its own civilian population into the territory it occupies,[87] a rule interpreted by the International Court of Justice as applying to any measures taken "to organize or encourage" such transfers.[88] It follows from this that the relocation of state employees from the territory of the Russian Federation to Crimea can be regarded as "organized or encouraged" population movements violating international humanitarian law provisions, while voluntary movements of civilians from the Russian Federation to Crimea are not prohibited.

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[80] For example, a 19-year-old Sevastopol resident was convicted by the Sevastopol Leninskyi district court on 28 June 2018.

[81] HRMMU interview, 8 November 2017.

[82] Article 49, Geneva Convention IV.

[83] Judgments of 2 February 2018 of the Yevpatoriyskiy city court.

[84] The Government of Ukraine identified 255 Ukrainian detainees who were transferred from Crimea to various penitentiary institutions in the Russian Federation since March 2014. The NGOs "Ukrainian Helsinki Human Rights Union" and "Regional Center for Human Rights" claim that such transfers have involved at least 4,700 detainees.

[85] HRMMU interview, 6 March 2018.

[86] These figures encompass population movements between any two regions of the Russian Federation, and most likely include relocations between the "Republic of Crimea" and the city of Sevastopol, which are considered by the Russian Federation as separate regions of the Russian Federation.

[87] Article 49, paragraph 6, Geneva Convention IV.

[88] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, paragraph 120.

VII. Access to mainland Ukraine's public services

79. As of 1 May 2018, 31,971 internally displaced persons (IDPs) from Crimea were registered in mainland Ukraine.[89] This does not include displaced persons who left without registering as IDPs. While their status as Ukrainian citizens guarantees them equal treatment before the law, displaced persons, current residents of Crimea, and even people who relocated to the mainland before occupation, often cite obstacles to accessing public services, including civil registration, identification documents and banking services in mainland Ukraine.

80. After March 2014, all natural and legal persons with registered addresses in Crimea lost the status of "residents" in mainland Ukraine for taxation and banking purposes.[90] In practice, this created a situation where current residents of Crimea as well as residents of mainland Ukraine whose passports indicate registration in Crimea lost access to banking services, including the ability to open and maintain a bank account, perform transactions, and use financial services.

81. In order to obtain valid death or birth certificates Crimean residents must submit applications to courts in mainland Ukraine. An expedited procedure for court hearings was introduced in 2016[91] but has since been unevenly applied. Courts sometimes demand evidence of the formal refusal of administrative bodies to register a birth or a death, which is not prescribed by law.[92]

82. The current judicial procedure does not provide for recognition of marriages and divorces. In one case, the court did not recognize a divorce issued in Crimea, preventing the applicant from re-marrying in mainland Ukraine.[93] The ICJ has noted that the invalidity of legal acts issued by a non-recognized administration effectively controlling a territory does not extend to the acts that, if ignored, would be "to the detriment of the inhabitants of the Territory".[94]

83. Most applications addressed by Crimean residents to Ukrainian state institutions concern the issuing or renewal of passports. Those who lost their Ukrainian passports and children applying for Ukrainian passports for the first time were often under closer scrutiny and required to provide additional evidence of their identity. The financial burden of traveling to mainland Ukraine, long waiting periods, and fines for failing to renew documents on time are often cited as discouraging passport applications and ultimately undermining the enjoyment of the rights attached to citizenship. The situation is sometimes complicated by arbitrariness and bias against Crimean residents. A woman from Crimea was denied the possibility to change her last name after marriage and was told "to apply in Crimea".[95] An officer of the State Migration Service refused to extend the validity of the passport of a Crimean woman who had relocated to mainland Ukraine before 2014 and openly stated she could be "a separatist".[96]

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[89] The figure includes 8,216 children, 2,774 elderly people, and 490 people with disabilities. Source: Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea.

[90] Law "On the Creation of the Free Economic Zone "Crimea" and the Particularities of the Conduct of Business Activity on the Temporarily Occupied Territory of Ukraine" (12 August 2014), available at http://zakon2.rada.gov.ua/laws/show/1636-18?info=1; Decree 699 of the National Bank of Ukraine (3 November 2014), available at http://zakon0.rada.gov.ua/laws/show/v0699500-14. The High Administrative Court of Ukraine upheld the decree on 8 November 2017.

[91] Article 317, Civil Procedure Code of Ukraine. In 2016, a new expedited procedure with a possibility to submit applications to courts in any locality in mainland Ukraine was introduced.

[92] Judgment of the Kalanchatskyi district court, (2 February 2018), available at http://www.reyestr.court.gov.ua/Review/71958274.

[93] Judgment of the Golovanivskyi district court, (17 November 2017), available at http://www.reyestr.court.gov.ua/Review/70303605.

[94] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports 1971, paragraph. 125.

[95] HRMMU interview, 7 February 2018.

[96] HRMMU interview, 27 November 2017.

84. International human rights law requires equal protection of the law without discrimination on any ground such as national origin, birth, or other status.[97] States have a continuing obligation to use all the legal and diplomatic means available to ensure respect for human rights in relation to the population of a territory controlled by *de facto* authorities.[98]

VIII. Conclusions and recommendations

85. **During the 10 months covered by this report, Crimean residents continued to be subjected to the legal and governance framework of the Russian Federation, in violation of international humanitarian law. Against this background, the overall human rights situation in Crimea continued to be marked by restrictions in the exercise of fundamental freedoms and a lack of effective remedies to claim rights and seek justice.**

86. **In order to improve the human rights situation in Crimea, OHCHR recommends:**

87. **To the Government of the Russian Federation:**

(a) Uphold human rights in Crimea and respect obligations that apply to an occupying power pursuant to international humanitarian law provisions;

(b) Ensure proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea, pursuant to General Assembly resolutions 71/205 and 72/190;

(c) Respect the laws in place in Crimea in 2014 before the beginning of the occupation, in particular by refraining from enforcing Russian Federation legislation in Crimea, pursuant to General Assembly resolutions 68/262, 71/205, and 72/190;

(d) Refrain from compelling residents of Crimea to serve in its armed forces; end the practice of deportations and forcible transfers of protected persons, including detainees, outside the occupied territory; refrain from transferring its own civilian population to Crimea and end the practice of encouraging such transfers;

(e) End discriminatory practices and human rights violations and abuses, including torture, ill-treatment, enforced disappearances, arbitrary arrests and detention;

(f) Refrain from arresting or prosecuting Crimean residents for acts committed or opinions expressed before the occupation and release all Crimean residents who have been arrested or imprisoned for such acts;

(g) Ensure that lawyers are able to perform their duties without intimidation, harassment or improper interference;

(h) Ensure effective investigation of allegations of ill-treatment, torture and enforced disappearances, particularly those involving state agents as alleged perpetrators; ensure accountability and provide redress to victims and their families;

(i) Stop prosecuting individuals for social media comments or posts that do not constitute calls for discrimination or violence;

(j) End arbitrary searches of private properties belonging to Crimean Tatars;

(k) Ensure adequate medical assistance to individuals detained in penitentiary institutions irrespective of their citizenship or any other discriminatory grounds; investigate effectively all deaths in detention;

[97] Article 26, ICCPR; article 2(2), ICESCR; article 14, ECHR.

[98] HRC, Concluding Observations on Moldova (CCPR/C/MDA/CO/2(2009); ECtHR, *Ilascu and Others v. Moldova and Russia* (8 July 2004), paragraph 331.

(l) Ensure unimpeded freedom of movement between Crimea and mainland Ukraine;

(m) Report the number of individuals transferred from Crimea to the Russian Federation to serve criminal sentences and take immediate actions in order to return such individuals to Crimea;

(n) Take all necessary steps to ensure that freedoms of expression, peaceful assembly, association, thought, conscience and religion can be exercised by all in Crimea, without discrimination on any grounds;

(o) Enable a safe environment for independent and pluralistic media outlets and civil society organizations; ensure unimpeded access of Ukrainian and foreign journalists, human rights defenders and other civil society actors to Crimea;

(p) Respect the right to peaceful assembly; cancel unjustified pre-authorization requirements; end the practice of administrative and criminal prosecution for the exercise of this right;

(q) Allow free manifestation of one's traditions and cultural identity, including the unimpeded functioning of community organizations and commemoration of important events;

(r) Comply with the Order of the ICJ of 19April 2017; lift restrictions imposed on the Crimean Tatar community to conserve its representative institutions, including the ban on the Mejlis; ensure the availability of education in Ukrainian language;

(s) Restore property rights of all former owners deprived of their title as a result of confiscations carried out in Crimea and Sevastopol; and

(t) Ensure that healthcare services are available and accessible to all residents of Crimea; end the ban on substitution therapy for intravenous drug-users.

88. **To the Government of Ukraine:**

(a) Respect its human rights obligations in relation to Crimean residents; use all legal and diplomatic means available to this end;

(b) Investigate, within practical limits, human rights violations and abuses committed in Crimea;

(c) Facilitate freedom of movement to and from Crimea; refrain from policies restricting access of journalists, human rights defenders and other civil society actors to Crimea;

(d) Simplify access of current and former residents of Crimea to all public services offered to residents of mainland Ukraine, including banking services, identification documents and civil registration procedures; and

(e) Support dialogue between the Ombudspersons of Ukraine and the Russian Federation to facilitate the voluntary transfer of Ukrainian detainees held in Crimea and the Russian Federation to penitentiary institutions in mainland Ukraine.

89. **To the international community:**

(a) Urge the Russian Federation to comply with its obligations as an occupying power under international human rights and humanitarian law;

(b) Encourage the Russian Federation to grant international and regional human rights monitoring mechanisms unimpeded access to Crimea; and

(c) Continue advocacy for the respect of human rights, including by condemning human rights violations committed by State agents of the Russian Federation in Crimea at bilateral and multilateral forums.

21 September 2018

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Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 10
Technical assistance and capacity-building

Report on the human rights situation in Ukraine 16 May to 15 August 2018

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Ukraine: Civilian casualties along the contact line, 16 May - 15 August 2018
Zolote
Stanytsia Luhanska
Maiorske
Marinka
Novotroitske
Pyshchevyk
RUSSIAN FEDERATION
Civilian Deaths
1 - 2
3
Civilian Injuries
1 - 4
5 - 7
8 - 10
HRMMU office locations in Ukraine
Non operational checkpoint
Operational checkpoint
Contact line
Settlement
Neighbouring country

I. Executive summary

1. This twenty-third report on the situation of human rights in Ukraine by the Office of the United Nations High Commissioner for Human Rights (OHCHR) is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)[1], and covers the period from 16 May to 15 August 2018.

2. During this reporting period, OHCHR documented more than 160 violations and abuses which affected a total of 282 victims, representing a level of human rights violations and abuses similar to the previous reporting period.[2] Of these, 85 human rights violations and abuses were committed during the reporting period. The Government of Ukraine was responsible for 53 violations (62 per cent of those recorded), armed groups for 10 (12 per cent of those recorded), and the Government of the Russian Federation (as the Occupying Power[3] in the Autonomous Republic of Crimea and city of Sevastopol[4]) for 22 (26 per cent of those recorded).[5]

3. While OHCHR is fully operational in government-controlled territory, during the reporting period it faced increased restrictions in its operations in armed group-controlled territory of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic'[6]. OHCHR continues to monitor remotely the human rights situation in Crimea, under the temporary occupation of the Russian Federation which continues to disregard its obligations as an occupying power under the Fourth Geneva Convention by failing to respect the laws of the occupied territory.[7]

4. The active conflict in eastern Ukraine continues disrupting civilian life and causing deaths, injuries and destruction. The periodic spikes and lulls in civilian deaths and injuries reflect the volatile situation and sustained atmosphere of insecurity and anxiety that characterizes civilian life on both sides of the contact line. Between 16 May and 15 August 2018, OHCHR recorded 105 civilian casualties in eastern Ukraine (12 deaths and 93 injuries), which constituted a 30 per cent increase compared to the previous reporting period. Most of the incidents occurred between mid-May through June. Fifty per cent of casualties were caused by shelling or light weapons, the majority recorded in armed group-controlled territory and attributable to the Government. Following 1 July, when the "harvest ceasefire" took effect, the numbers of civilian casualties dropped significantly, demonstrating the importance of concerted efforts to secure a sustainable ceasefire.

5. This report stresses how the hostilities and extreme levels of landmine and explosive remnants of war contamination continue to have devastating effects on the protection of civilians, access to social and economic benefits, and freedom of movement for both, civilians living in the conflict zone and those who are internally displaced. Increased hostilities in May-June 2018 worsened the immediate and long-term human rights protection of people living in the affected areas, serving as a harsh reminder that the armed conflict directly affects more than 600,000 people, who live within the range of five kilometers on both sides of the contact line.

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[1] HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paras. 7-8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

[2] During the previous period covering the period of 16 February to 15 May 2018, OHCHR documented 321 human rights violations and abuses, which affected 252 victims. Of those, 112 human rights violations and abuses occurred during the reporting period.

[3] *See* United Nations General Assembly resolution 71/205 of 19 December 2016 referring to Crimea as occupied by the Russian Federation, and resolution 72/190 of 19 December 2017 urging the Russian Federation to comply with its obligations as an occupying power in Crimea.

[4] Hereinafter "Crimea".

[5] These numbers do not include civilian casualties caused by the armed conflict.

[6] Hereinafter 'Donetsk people's republic' and 'Luhansk people's republic'.

[7] United Nations, General Assembly resolutions referring to Crimea (A/71/205 and A/72/190).

6. OHCHR examined the situation of civilians from the area of Chyhari on the contact line following the operations by Ukrainian forces to take control of the area in mid-May 2018. In addition to increased risks of death and injury from shelling and explosives, OHCHR observed impediments related to the rights to restitution and compensation for use, damage or destruction of private property.

7. Inextricably linked to the hostilities are the persisting conflict-related serious human rights violations and abuses attributable to all parties, including unlawful or arbitrary detention, incommunicado detention, torture, ill-treatment, sexual violence, and/or threats to physical integrity. OHCHR documented 74 such violations and abuses – 15 of which were committed during the reporting period. The Government of Ukraine was responsible for ten of these (67 per cent), armed groups for three (20 per cent); and the Russian Federation as the occupying power in Crimea for two (13 per cent).

8. In armed group-controlled territory, OHCHR is still denied access to the detention facilities for confidential interviews, which raises concerns about the detention conditions and treatment of detainees. In government-controlled territory OHCHR generally continued to enjoy access to official places of detention and the ability to conduct confidential interviews of detainees in line with international standards.

9. OHCHR continued documenting violations of fair trial rights in conflict-related cases, and is concerned that arbitrary implementation of plea bargains and in absentia proceedings may be used in a manner that risks circumventing essential judicial guarantees. OHCHR is further concerned by attacks on, and intimidation of, defence lawyers by members of extreme right-wing groups, and continuing interference with the independence of judges. On a positive note, some procedural hurdles were removed for genuine prosecution of murder charges concerning the 2014 Maidan protests, and indictments were filed against former police related to 2 May 2014 violence in Odesa.

10. The people living in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' remained subject to the decisions of parallel structures of 'administration of justice'. Pre-conflict prisoners whose appeals were not heard prior to the outbreak of the conflict and individuals who 'appealed' their 'conviction' by the armed-group 'courts' remain indefinitely detained without any remedy. In addition, the practice of conducting 'proceedings' in closed sessions, hidden from independent international monitors, denies individuals the important safeguard of a public hearing.

11. OHCHR observed 32 violations and abuses against 23 media and civil society activists during the reporting period, with 30 violations that occurred within the reporting period which is a 210 per cent rise in documented attacks compared to the previous reporting period of 16 February to 15 May 2018. OHCHR raises serious concerns regarding the erosion of civic space in the run-up to 2019 elections and encourages law enforcement and local governments to consistently address these attacks by taking steps to protect space for the safe and unhindered exercise of freedoms of expression, opinion and peaceful assembly. Although OHCHR access is limited within armed group-controlled territory, it has documented cases of 'regulations' and action indicating that expression of critical thought and free media are not welcome and are repressed.

12. OHCHR continued to remotely monitor the human rights situation in Crimea from mainland of Ukraine. The Russian Federation continued to apply its laws in violation of international humanitarian law[8] and, in some cases, applied it retroactively to events preceding the occupation. In total, OHCHR documented 47 human rights violations, 25 of which were committed during the reporting period. The Government of the Russian Federation was responsible for 22 violations and the Government of Ukraine was responsible for three violations.

13. As part of its mandate to promote human rights, OHCHR advised the Ministry of Justice of Ukraine on their methodology to monitor and evaluate the National Human

[8] United Nations, General Assembly resolutions referring to Crimea (A/71/205 and A/72/190)

Rights Strategy and related Action Plan. OHCHR referred 30 allegations of human rights violations and abuses to specific duty-bearers.

II. OHCHR methodology

14. OHCHR's quarterly reports are based on information collected by HRMMU through interviews (with victims, witnesses, relatives of victims and lawyers), site visits, meetings with Government representatives, civil society and other interlocutors, and trial monitoring, as well as reviews of court documents, official records, open-source material, and other relevant materials.

15. OHCHR evaluates all sources and information for credibility and reliability, and exercises due diligence to corroborate and crosscheck information from as wide a range of sources as possible. Accounts are also evaluated on their consistency with what is already known about an incident, and with patterns observed in other similar incidents. When documenting human rights cases, the standard of proof applied is that, to an objective observer, there are "reasonable grounds to believe" that a particular human rights violation or abuse occurred, or that a given pattern of violations occurred.

16. OHCHR applies the same due diligence and standard of proof when documenting civilian casualties. In some instances, documentation may take weeks or months before conclusions can be drawn, and therefore numbers on civilian casualties may be revised as additional information becomes available.

17. OHCHR is committed to the protection of its sources and provides for the preservation of their confidentiality. It therefore does not disclose any information that may lead to the identification of sources, unless sources have provided their informed consent. OHCHR also systematically assesses the potential risks of harm and retaliation to its sources. Accordingly, some documented cases are not included or are anonymized.

18. The findings presented in this report are based on data collected by OHCHR through 177 in-depth interviews with victims and witnesses of human rights violations and abuses, as well as site visits in both government-controlled and armed group-controlled territory.[9] OHCHR also carried out 567 specific follow-up activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms.[10]

III. Impact of hostilities

A. Conduct of hostilities and civilian casualties

We have been forgotten by everybody and nobody cares about us.

- Resident of a village near the contact line

19. During the reporting period, OHCHR recorded 105 conflict-related civilian casualties[11]: 12 killed[12] and 93 injured.[13] This is a 29.6 per cent increase compared with the

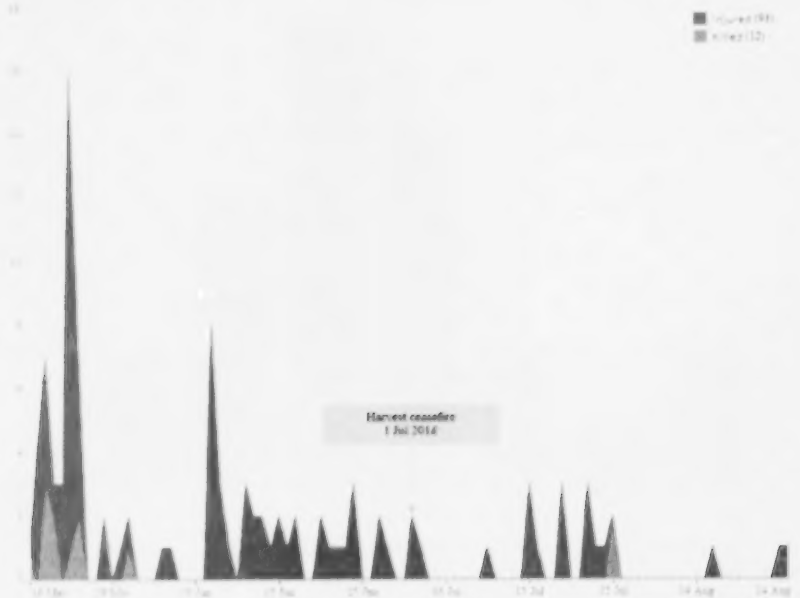
[9] OHCHR has offices in the cities of Kharkiv, Kramatorsk, Kyiv, Mariupol and Odesa (government-controlled territory), and in the cities of Donetsk and Luhansk (armed group-controlled territory). Consequently, the majority of human rights violations and abuses documented by OHCHR occurred in the respective regions, as well as in Crimea.

[10] United Nations Human Rights Council Special Procedures mandate holders, Human Rights Treaty Bodies, and Universal Periodic Review (UPR).

[11] OHCHR documents civilian casualties by consulting a broad range of sources and types of information, which are evaluated for credibility and reliability. In analyzing each incident, OHCHR exercises due diligence to corroborate information from as wide a range of sources as possible, including OSCE public reports, victim and witness accounts, military actors, community leaders,

previous reporting period, from 16 February to 15 May 2018 (81 civilian casualties[14]), and a 37.1 per cent decrease compared with the same period of 2017 (167 civilian casualties[15]).

Timeline of civilian casualties, 16 May - 15 August 2018



20. Hostilities were marked by the continued use of indirect and/or explosive weapons which impacted civilian residential areas and essential civilian infrastructure. The "harvest ceasefire", which commenced on 1 July appears to have contributed to a marked decrease in civilian casualties following the significant spike in May and June. In July, three civilian casualties were caused by light weapons and small arms but none by shelling. These numbers represent a substantial decrease from the 32 civilian casualties caused by shelling, light weapons and small arms fire in June. The dramatic drop in civilian casualties caused by shelling demonstrates that adherence to the ceasefire committed to under the Minsk agreements has positive results in protecting the lives and well-being of civilians.

21. OHCHR's monthly recording of civilian casualties shows an erratic trend since the beginning of 2018, with a progressive decrease to the lowest number of civilian casualties recorded since the start of the conflict in April 2014. With a sharp rise in the number of civilian casualties in April and May was due to an alarming upsurge of hostilities. Through

medical professionals and other interlocutors. In some instances, documentation may take weeks or months before conclusions can be drawn, meaning that numbers on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented in this report are complete. Civilian casualties may be underreported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods. Since the beginning of the conflict on 14 April 2014 until 15 August 2018, OHCHR recorded 2,737 civilian deaths (1,571 men, 966 women, 96 boys, 48 girls and 56 adults whose sex is unknown). With the 298 deaths on board Malaysian Airlines MH17 flight on 17 July 2014, the total death toll of the conflict on civilians has been at least 3,035. The number of injured civilians is estimated at 7,000 to 9,000 as of August 2018.

[14] 5 women, 3 men, 3 boys and 1 girl.

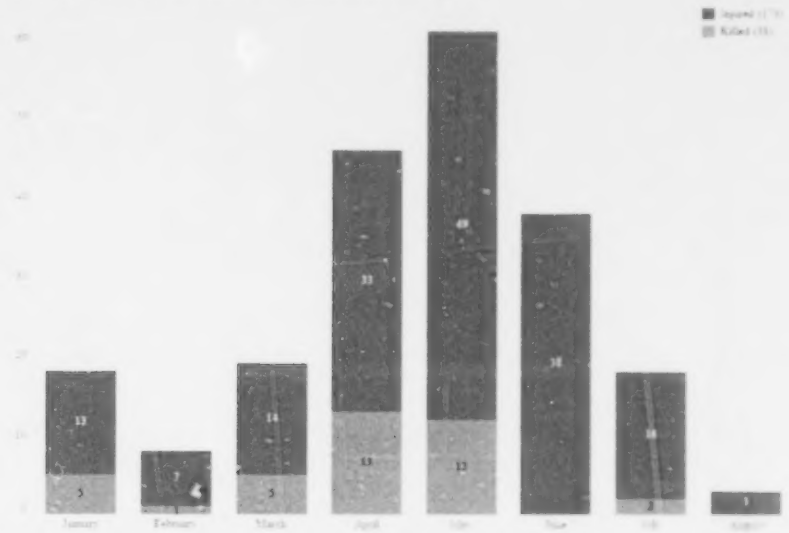
[15] 49 men, 26 women, 9 adults whose sex is not yet known, 8 boys and 1 girl.

[14] 19 killed and 62 injured.

[15] 29 killed and 138 injured.

June and July the number of civilian casualties fell. From the beginning of August to the end of the reporting period, there was a further 66 per cent decrease compared to July.

Civilian casualties per month, 1 January - 15 August 2018



22. The greatest number of civilian casualties during the reporting period – 50.5 per cent of the total – was caused by shelling or light weapons fire: 53 (7 killed and 46 injured); 42 of which (4 killed and 38 injured) were recorded in territory controlled by armed groups and are attributable to the Government, while 11 (3 killed and 8 injured) were recorded in government-controlled territory and are attributable to armed groups.[16] All of the incidents occurred in residential neighbourhoods, including the victims' houses, or other areas regularly frequented by civilians.[17]

23. For example, on 28 May, at approximately 11 a.m., a teenage girl was struck by shrapnel and killed instantly when a shell landed in the yard of her grandparents' home in Zalizne (government-controlled territory, Donetsk region). In another incident, on 7 June, at approximately 10 a.m., a shell landed next to a civilian bus transporting approximately 15 passengers as it entered Holubivske village (armed group-controlled, Luhansk region). Seven people, including the driver, were injured. OHCHR notes that over 1,000 civilians reside in Holubivske,[18] that there were no military objectives located near the site of the incident, and that interlocutors pointed out that there were no members of armed groups in combat function observed in the area at the time.

24. OHCHR recalls that it is a serious violation of international humanitarian law for a party to a conflict to target civilians and civilian infrastructure, or to carry out an indiscriminate attack, and that the parties have an obligation to take all feasible precautions to avoid harm to the civilian population.[19]

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[16] The standard of proof applied by OHCHR is that, to an objective observer, there are reasonable grounds to believe that a particular civilian casualty occurred. OHCHR attributes a civilian casualty to a particular party based on the geographic location where it occurred, the direction of fire, and the overall context surrounding the incident. OHCHR is not able to attribute all civilian casualties to a specific party to the conflict.

[17] Due to the geographic location of the contact line, areas adjacent to it in territory controlled by armed groups are built-up residential and urban areas in many places, whereas areas adjacent to the contact line in territory controlled by the Government are mainly fields and smaller villages.

[18] Based on OHCHR observations. No official numbers were available.

[19] ICRC, Customary International Humanitarian Law Database, Rules 1, 7, 11, 12, 15, 17. Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul. Accessed 5 August 2018.

25. During the reporting period, mine-related incidents[20] accounted for 13.3 percent of all civilian casualties recorded (14: 3 killed and 11 injured).[21] Handling of explosive remnants of war (ERW),[22] mostly hand grenades,[23] accounted for 26.7 per cent of civilian casualties: (28: 1 killed and 27 injured).[24]

26. Small arms fire caused 8 civilian casualties (1 killed and 7 injured) which comprised 7.6 per cent of all civilian casualties recorded.[25]

27. Lastly, road incidents with participation of armed personnel caused two injuries.[26]

■ Causes of civilian casualties

28. Critical civilian infrastructure located in proximity to the contact line continued to come under shelling, light weapons and small arms fire, including homes, but particularly water facilities and schools, and other public infrastructure. Ten incidents of shelling impacting the Donetsk Filtration Station (DFS)[27] and two water pumping stations were documented.[28] In addition, shelling damaged and disrupted operations of wastewater treatment plants on three occasions.[29]

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[20] Incidents in which civilians were killed or injured by mines (antipersonnel or anti-vehicle) or explosive devices triggered in the same way, such as booby traps, or by explosive remnants of war that are inadvertently detonated by unsuspecting civilians.

[21] Two killed and 2 injured in territory controlled by armed groups, and 1 killed and 9 injured in territory controlled by the Government.

[22] ERW include abandoned explosive ordnance (AXO) and unexploded ordnance (UXO). Unlike victims of mine-related incidents, victims of ERW result from handling and/or manipulating an ERW, or being present in immediate proximity to the person handling an ERW. In some instances there was purposeful handling that led to detonation, for example by trying to dismantle the ERW.

[23] For instance, on 21 May, a Ukrainian serviceman on leave injured nine adults by detonating a hand grenade in an interpersonal conflict in the village of Lisna Tarnovytsia (Ivano-Frankivsk region); on 22 May, a boy was killed and two boys and a girl injured when a hand grenade exploded which one of the boys handled while riding a bus in the armed group-controlled town of Debaltseve (Donetsk region); and on 19 July, a boy, his brother and grandmother were injured in the armed group-controlled city of Horlivka (Donetsk region) when a hand grenade exploded while he handled it.

[24] Twelve (1 killed and 11 injured) were recorded in territory controlled by armed groups and 16 (all injured) in government-controlled territory.

[25] Three were injured in territory controlled by armed groups, 1 killed and 3 injured in Government-controlled territory, and 1 injured in "no man's land".

[26] Both in government-controlled territory.

[27] DFS is located in "no man's land" approximately 15 kilometres north of Donetsk city, between the government-controlled Avdiivka and armed group-controlled Yasynuvata. It processes the public water supply for over 345,000 people on both sides of the contact line and has consistently been shelled. *See, e.g.*, OHCHR Report on the Human Rights Situation in Ukraine (hereinafter "OHCHR Report"), 16 November 2017 to 15 February 2018, para. 108.

[28] The third lift pumping station of Siverskyi Donets was shelled on 17 May 2018. The Siverskyi Donets-Donbas (SDD) channel is the main source of water for Donetsk region, with approximately 3.25 million people relying on the pumping station. The first lift pumping station of the South Donbas Water Pipeline came under shelling and small arms fire on 19-20 June 2018. The station supplies raw water (which originally arrives via the SDD channel) to five filter stations, which in turn service 1.17 million people.

[29] WASH incident reports, https://www.humanitarianresponse.info/en/operations/ukraine/documents. In the first half of 2018, the WASH Cluster recorded a total of 57 security incidents affecting water infrastructure in Donetsk and Luhansk regions and noted an increase in the number of incidents involving small arms fire (13 incidents).

29. On 7 June, due to constant shelling during both daylight and night-time hours,[30] OSCE SMM suspended its enhanced presence at DFS, and Voda Donbasa halted all DFS operations for days in order to seek stronger security guarantees from the parties to the conflict. There was only one security incident reported at DFS during the month of July, which may be at least partially due to the "harvest ceasefire" recommitment (see above).

30. From 16 May to 30 June, OHCHR documented seven incidents of shelling of various schools resulting in damages to the facilities.[31] On the morning of 17 May 2018, shells hit the premises of school no. 11 in Svitlodarsk (government-controlled, Donetsk region) while 125 children were attending classes. The school was damaged and one parent who happened to be passing nearby was injured.[32] A boarding school in Dokuchaievsk (armed group-controlled, Donetsk region) was damaged by shelling on 25 June 2018. As a result, the school management and parents cancelled the summer programme and closed the school due to the volatile security situation.

31. A comprehensive State policy and mechanism on remedy and reparation for civilians injured during the hostilities and to relatives of those killed in hostilities has yet to be established.

B. Situation at the contact line and rights of conflict-affected persons

If I had money and a place to go to, I would have left my house.

- Resident of a village near the contact line

32. The cumulative effects of the armed hostilities, infringements on freedom of movement and the declining socio-economic situation continued to further entrench hardship, particularly for people living in conflict-affected areas along the contact line.[33]

1. Right to restitution and compensation for use or damage of private property

My sister is 75 years old. Now everything is gone, lost or burnt.
She will never see her home like it was before.

- A woman speaking of her sister who fled Chyhari following escalation of

33. An effective restitution and compensation mechanism for over 40,000 private properties destroyed or damaged by the armed conflict has not yet been developed. The lack of such a mechanism contributes to financial hardship, and compounds the health and security challenges stemming from residing in an active conflict area and/or displacement. Additionally, OHCHR is concerned that those people deprived of their property in government and armed group-controlled territory may not have recourse to an effective remedy.

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[30] DFS was shelled repeatedly from 3 to 6 June, damaging the facility and knocking out power lines. This resulted in disrupting the public water supply to certain areas near the contact line. During the first half of 2018, there were 21 security incidents at DFS, causing operations to stop for 17 days. https://www.humanitarianresponse.info/en/operations/ukraine/document/13-wash-cluster-alert-bulletin-01-january-30-june-2018-issue-13.

[31] Education Cluster, https://www.humanitarianresponse.info/en/operations/ukraine/education.

[32] OHCHR interviews, 17, 18 and 22 May 2018.

[33] *See, e.g.*, OHCHR Report, 16 February to 15 May 2018, paras. 31-38; OHCHR Report, 16 August to 15 November 2017, paras. 111-117.

Human rights situation in Chyhari area (located on contact line, Donetsk region)

After the Ukrainian armed forces (UAF) took control of most of Chyhari in mid-May, the area came under increased shelling, and the security, humanitarian and human rights situation significantly deteriorated. Approximately 95 per cent of the 185 residents were displaced. 15 homes were destroyed and 47 damaged, and surrounding areas are contaminated with unexploded ordinances (UXOs). OHCHR also documented allegations of looting.

Residents faced increased risk and insecurity due to the escalation of hostilities. In some incidents of shelling, UAF positions were reportedly located in immediate proximity to civilian houses. In addition, OHCHR was informed of at least nine cases of military use of civilian property. Such actions by the military heighten the risk of civilian casualties and damage to civilian property by exposing them to attack. Under international humanitarian law, it is the duty of each party to the conflict to take all feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks, which includes avoiding locating military objectives within or near densely populated areas.

According to interlocutors, the Government has not taken steps to ensure restitution or compensation for the affected population. Furthermore, the commissions responsible for assessing the damage and destruction of homes are prohibited from entering the area due to security reasons. This prevents them from issuing certificates of damage, which in turn hinders owners and tenants from being in a position to access remedies when available for damaged or destroyed property.

Displaced residents informed OHCHR that they had not been provided with adequate alternative accommodation. While district authorities made some efforts to provide housing, the conditions of the accommodation cannot be considered as adequate. The UAF are making efforts to facilitate access to the area, however displaced residents cannot return and live in their homes due to the security situation.

Territory controlled by armed groups

34. OHCHR is concerned about expropriation of civilian property by the 'ministry of state security' ('MGB') in territory controlled by 'Donetsk people's republic'. One such case involves the apartment of a family in Donetsk who received it under a State funded programme before the conflict. In January 2015, armed men (believed to be from 'MGB') broke into the apartment and seized personal property, which was followed by threatening phone calls demanding that the family hand over the keys to the apartment. When the family reported these incidents to 'MGB' and 'police' several days later, 'MGB' requested access to the apartment to conduct "special operations" for three days. The keys were returned only after nine months, but according to the family, a number of belongings were missing from the apartment. On 4 March 2018, the apartment was sealed by the 'MGB' and since then the family has not had access to their home. In 2018, the family submitted multiple appeals to the various duty bearers in territory controlled by the armed groups.

35. In May 2018, OHCHR initially started attending the 'civil hearing' on expropriation of the apartment, but in June the 'court' decided to hold 'closed sessions' and ordered OHCHR to leave. No other members of the public were present.[54]

36. OHCHR is concerned that this case may not be isolated. According to one interlocutor, private apartments have been expropriated in a similar manner in Donetsk,

[54] The 'judge' accepted the 'MGB's' argument that the 'trial' must be closed due to the possible disclosure of identities of 'MGB' elements in the course of the hearing. OHCHR monitoring, 21 June 2018.

affecting at least five families. Unless required by imperative military necessity, such expropriations may constitute violations of international humanitarian law, which prohibits the seizure of private property. They may also violate international human rights law which protects the right not to be subjected to arbitrary interference in one's privacy, family or home, and guarantees legal protection against forced eviction.[35]

2. Right to social security and social protection

37. During the first half of the reporting period, the Government continued to terminate high numbers of pension payments. This trend appeared after the Government introduced the procedure in June 2016, requiring residence verification for IDP pensioners. From April to June 2018, the number of internally displaced persons (IDPs) receiving pensions fell by 15 per cent, from approximately 562,000 to 477,000.[36] In July 2018, the Cabinet of Ministers adopted Resolution No. 548 which increased the frequency with which IDP pensioners must undergo personal verification at the state-run bank. Verification must take place every six months rather than annually. OHCHR cautions that requiring pensioners to undergo verification every six months will increase exposure to protection risks, as many must cross the contact line for this administrative procedure.[37] This new requirement further compounds the existing limitation for IDP pensioners, who risk losing their IDP registration and therefore their access to pensions if they stay in armed group-controlled territory uninterruptedly longer than 60 days or 90 days in exceptional circumstances.[38]

38. Additionally, the Resolution introduced some positive changes. It expanded the provision of targeted financial assistance to include children born after the start of the conflict, and it doubled the length of time for IDPs to receive targeted financial assistance if they are at-risk of unemployment. It also exempted IDP pensioners with disabilities from physical verification at the bank.[39]

39. In a positive development, on 4 July 2018, the Kyiv appellate administrative court found that the residence verification requirements for IDPs introduced by Cabinet of Ministers Resolutions No. 365 and No. 637 contradicted Ukrainian legislation as they limited access to pensions and social security and resulted in discrimination against IDPs compared to other Ukrainian pensioners.[40] The Ministry of Social Policy announced it was developing a new mechanism for provision of social payments to IDPs in line with the court decision.[41] Pending the establishment of the new system, the execution of the court's judgment has not yet been implemented, in particular in regards to residence verification for determining IDPs' pensions and social benefits.[42]

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[35] Customary International Humanitarian Law Database, Rule 50; Committee on Economic, Social and Cultural Rights, general comments 4 and 7.

[36] Pension Fund, available from https://bit.ly/2Kqa1Sb. OHCHR notes that on 3 May 2018, the Supreme Court ruled that the termination of pension payments to an IDP under Cabinet of Ministers resolution no. 365 was an unlawful interference to the right to property. *See* OHCHR Report, 16 February to 15 May 2018, para. 42.

[37] *See* OHCHR Report, 16 February – 15 May 2017, paras. 8, 99, and 123. Prior to the Resolution, just after 12 months from initial registration, an IDP would only have to register once a year.

[38] Article 12(1.8) of the Law of Ukraine 'On ensuring the rights and freedoms of internally displaced persons' no.1706-VII of 20 October 2014.

[39] Resolution No. 548 exempts from 'Oshchadbank' physical verification of IDP pensioners that qualify within the classification of disability group I and those who require constant external assistance.

[40] Judgment available from http://reyestr.court.gov.ua/Review/75172804.

[41] Ukrainian-Helsinki Human Rights Union, https://helsmki.org.ua/articles/sotsvyplaty-dlya-vpo-bez-perevirok-minsotspolityky-rozroblyaje-proekt-neobhidnoji-postanovy/. Since the Government considers pensions as a social payment, it may be assumed that the new mechanism would regulate the provision of pensions as well.

[42] The Appellate Court's decision entered into force despite its cassation review, rendering inactive the provisions of the resolutions concerning the residence verification procedures. Thus, the authorities can no longer conduct residence verification of IDPs and IDP pension payments cannot be suspended

3. Freedom of movement, isolated communities and access to basic services

40. Despite impediments on the freedom of movement, large numbers of people continued to travel over the contact line, with 1,142,300 crossings recorded in May, 1,189,300 in June, and 1,289,100 in July.[43] Compared to the prior reporting period, the daily average of crossings over the reporting period increased by 5,000 to a daily average of nearly 39,000.[44] This increase is considered related to pensioners travelling to government controlled territory to receive their pensions which had been previously suspended.[45]

41. These numbers indicate that despite many risks, the conflict-affected population and IDPs residing in armed group-controlled areas undertake an arduous journey to reach government-controlled territory to access assistance, as well as their pensions. OHCHR remains concerned that individuals crossing the contact line, who consist predominantly of elderly and people with medical issues, are exposed to higher risks of death due to health conditions and insecurity.[46]

42. During the reporting period, people crossing the contact line were exposed to high summer temperatures without access to adequate sanitation or medical facilities. According to the Main Department of the State Emergency Services of Ukraine (SES) in Luhansk region, up to 100 people experienced health incidents each day during the reporting period at the Stanytsia Luhanska entry-exit check point (EECP) on government-controlled territory. The conditions at Stanytsia Luhanska – the only official crossing route in Luhansk region – are particularly concerning. Open only to pedestrians, this route requires individuals who wish to cross the contact line in either direction to spend several hours standing in queues.[47] At least six individuals (five men and one woman) died while crossing the EECPs.[48]

43. The Ministry of Defence has elaborated a draft Resolution to regulate the procedure for movement of persons and goods across the contact line.[49] OHCHR notes, that it contains elements which should address some of the hardship faced by civilians crossing the contact line. In particular, it identifies the Donetsk and Luhansk Military-Civil Administrations as the bodies responsible for the maintenance of the respective EECPs; it

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on these grounds. However, the question of how to reinstate payments for IDPs whose pensions had already been suspended on these grounds prior to their cancellation by the court is more problematic.

[43] The official statistics are provided by the State Border Guard Service of Ukraine.

[44] During the summer months of June and July 2017, the total daily number of people crossing EECPs ranged from 30,000 to 40,000, with an average mean of over 34,000. Available from https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/crossing_the_line_of_contact_.pdf. Compared to May, June and July 2018, the daily range was between 36,000 to 41,500, an average mean of 39,000.

[45] The sharp increase can only partly be explained with the usual increase during the summer months, but noteworthy is the daily average calculated in this period compared with the same reporting period in 2017 has increased by 4,000 crossings per day.

[46] A monthly survey at the checkpoints shows that more than half of the people crossing the checkpoints are over the age of 60, due to the requirement that pensioners living in armed group-controlled territory register as IDPs in government-controlled territory in order to continue receiving their pensions. *See, e.g.*, Right to Protection, Crossing the Line of Contact, May 2018. Available from: https://bit.ly/2OHZq8v.

[47] SES in Luhansk region has informed OHCHR that 8,847 people (including 414 children and 1,162 persons with disabilities) sought medical attention from 1 May to 1 August, which was an increase from the previous months. OHCHR could not obtain comprehensive statistics regarding medical assistance sought on the side of the crossing route controlled by armed groups.

[48] A 77-year-old woman died on 17 May 2018, a 71-year-old man on 30 May 2018 (immediately after crossing), and a 79-year-old man on 19 July 2018. On 27 June 2018, a 79-year-old man died from a heart attack while queuing to cross the Maiorske checkpoint. On 11 August 2018, two men in their sixties died while attempting to cross the contact line, one man fell ill while crossing the Marinka EECP by bus and died shortly after disembarking, and the other died while queueing at the Marinka EECP.

[49] *See* OHCHR Report, 16 February to 15 May 2018, paras. 28-29.

allows the crossing to government-controlled territory of children born after 2014 with documents confirming the fact of birth issued in territory controlled by armed groups; and it revises the approach in regulating goods which cross the contact line.[50] OHCHR has consistently advocated for these changes and submitted, jointly with the Protection Cluster partners, comments and suggestions to the Government on the draft resolution which is yet to be finalized.

IV. Right to physical integrity

44. OHCHR documented 63 human rights violations and abuses involving unlawful or arbitrary detention, torture, ill-treatment, sexual violence and/or threats to physical integrity, committed on both sides of the contact line. Out of these, 13 violations and abuses

I do not believe in the law's protection of an ordinary person, a civilian, anymore. They simply beat you up and you have no choice but to say that you are guilty. It can happen to anyone…

- A conflict-related detainee

occurred within the reporting period, which affected eight victims (seven men and one woman). The Government of Ukraine was responsible for ten violations, and armed groups for three. OHCHR recalls that the Government of Ukraine bears primary responsibility to investigate and prosecute human rights violations perpetrated in its territory.[51] Failure to bring perpetrators of such violations to justice could "itself give rise to a separate breach of the Covenant".[52]

A. Access to detainees and places of detention

45. In government-controlled territory, OHCHR continued to enjoy access to official places of detention and the ability to conduct confidential interviews of detainees in line with international standards. However, as of March 2018, Kharkiv pre-trial detention facility (SIZO) № 27 denied OHCHR access to information about conflict-related detainees held there, and thus prevented OHCHR from accessing them.[53] During the reporting period, OHCHR interviewed 64 conflict-related detainees (56 men and 8 women) in pre-trial detention facilities in Mariupol, Zaporizhzhia, Bakhmut, Starobilsk, Kharkiv, Kherson and Odesa and in penal colonies in Kharkiv and Kherson.

46. In territory controlled by armed groups, OHCHR continued to be denied confidential access to detainees and to places of deprivation of liberty, despite repeated requests. This prevents OHCHR from fully documenting the human rights situation and raises serious concerns about the conditions of detention and treatment of detainees. These concerns were confirmed by first-hand information from former detainees describing how individuals in camouflage and masks would search cells and beat detainees in Luhansk SIZO and the penal colony in Khrustalnyi (formerly Krasnyi Luch) between 2016 and April 2018.[54]

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[50] The draft Resolution authorizes the Ministry of Temporary Occupied Territories and Internal Displaced Persons to develop a list of goods that are prohibited for transfer to/from armed group controlled territory, which would replace the exhaustive list of goods allowed to be transferred.

[51] International Covenant on Civil and Political Rights, art. 2.

[52] Human Rights Committee, General Comment No. 31 [80] The Nature of General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, para. 18.

[53] After the close of the reporting period, following OHCHR's complaints, the North-Eastern Inter-Regional Penitentiary committed to ensuring that all relevant information about conflict-related detainees would be made available to OHCHR. On 5 September 2018 Kharkiv SIZO sent the list regarding conflict related detainees, who were admitted in August 2018.

[54] OHCHR interviews, 8 and 18 June 2018. *See* OHCHR Report, 16 August to 15 November 2017, para. 66.

B. Arbitrary detention, enforced disappearance and abduction, torture and ill-treatment

> ***For more than a month I had no idea where my son was. We couldn't find any information on his whereabouts. We feared the worst, thinking he might be dead. We were so scared because we knew that this war made many people disappear and never come back.***
>
> - Mother of conflict-related detainee held *incommunicado*

47. In government-controlled territory, OHCHR continued documenting cases of unregistered detention, with individuals detained on conflict-related charges held incommunicado before their arrests were formalized. For example, on 20 June 2018, a resident of Khartsyzk was held for nearly 35 hours in the Bakhmut and Kramatorsk police departments without being officially arrested or charged and without access to a lawyer. During this time, people in military uniforms reportedly punched him, beat him with objects and threatened him with a knife, demanding that he "writes the truth". He was interrogated and pressured to agree to a plea bargain and was charged with participation in an armed group.[55] OHCHR also documented six cases where presumed or actual members of armed groups were captured by UAF or the Security Service of Ukraine (SBU) and held in unofficial detention facilities before their arrests were properly registered.[56] Four detainees involved in these cases described being tortured, ill-treated, subjected to sexual violence and/or threatened with further physical violence.

48. OHCHR documented a new case of arbitrary detention and ill-treatment allegedly carried out in an unofficial detention facility located at the Krasnoarmiisk ATP (automobile transportation company).[57] On 16 June 2018, armed men wearing military uniforms and masks stormed into a house where a Russian citizen (previously detained and released on 18 May 2018) was staying. They told him he was going to be "exchanged" to the Russian Federation, blindfolded him and transferred him to the Krasnoarmiisk ATP where he reportedly spent two days handcuffed to an iron bed. On 18 June, SBU officers presented him with two options: either to return to detention in the SIZO or "disappear". He was brought to court for a hearing, during which he agreed, out of fear, to be remanded back into custody.[58]

49. OHCHR is concerned about the lack of effective investigation into conflict-related human rights violations, such as arbitrary detention, torture and ill-treatment in government-controlled territory. It observed that investigations are inefficient, with no practical steps taken to investigate allegations of torture and ill-treatment. For example, in one case, a detainee submitted several complaints alleging an eight-day unregistered detention and ill-treatment at Krasnoarmiisk ATP in March 2015.[59] The Military Prosecutor's Office of Donetsk garrison initiated criminal proceedings upon his complaints but closed the investigation twice.[60] Even though the court ordered the investigation to be

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[55] Criminal Code of Ukraine, Article 260; OHCHR interview, 23 June 2018.

[56] During the reporting period, OHCHR documented cases indicating the same pattern of arbitrary detention it previously documented. *See* OHCHR Report, 16 May to 15 August 2017, para. 44. OHCHR interviews, 31 May, 18 June, 4 July, and 15 August 2018.

[57] The premises of the former Automobile Transportation Company No. 11411 in Pokrovsk (formerly Krasnoarmiisk), commonly known as "Krasnoarmiisk ATP", has been reportedly used by SBU since 2014. OHCHR previously documented several allegations by conflict-related detainees of *incommunicado* detention and torture there in 2014 and 2015 prior to their official arrest by SBU.

[58] OHCHR interview, 15 August 2018.

[59] *See* OHCHR Report, 16 November to 15 February 2017, para. 43.

[60] Criminal proceedings were initiated under article 365(2) of the Criminal Code of Ukraine (abuse of powers or official authority by an officer of the law enforcement agency). In 2016, the investigation into the complaints of ill-treatment was closed by the prosecutor due to absence of the event of a crime, however the Krasnoarmiiskyi town-district court quashed the prosecutor's decision. Ruling available from http://reyestr.court.gov.ua/Review/57418746. In 2017, the prosecutor closed the

reopened both times, there was no progress and, following the simultaneous release of the detainee on 27 December 2017,[61] the investigation was reportedly closed again.[62]

50. OHCHR is also concerned about a lack of accountability for incommunicado detention, torture and ill-treatment, including in the premises of Kharkiv SBU.[63] A number of former incommunicado detainees were not charged with any crimes, while they were held in unofficial places of detention, and subjected to prosecution after their release. For instance, in 2018, one of the former detainees, despite spending nearly two years held incommunicado and released without formal charges, faced prosecution for alleged membership in the armed groups back in 2014.[64]

Territory controlled by armed groups

51. In territory controlled by 'Luhansk people's republic', armed groups continued the practice of 30-day 'preventive arrest', during which victims are held incommunicado, not allowed to see lawyers, and relatives have no information on their whereabouts. Such practice, which may amount to enforced disappearance, raises serious concern about the treatment of detainees and the conditions of detention. During the reporting period, OHCHR received information about two people detained from 30 to 64 days under 'preventive arrest' by the 'ministry of the interior' and 'MGB'.[65]

52. In one case, a man was detained by 'MGB' on 28 March 2018 while crossing the Stanytsia Luhanska EECP. His mother sought information from the 'general prosecutor' and 'MGB', but was not informed until 19 April that her son was detained under 'preventive arrest'. During the first two days of detention, the man was reportedly severely beaten, forced to stand on his toes while his wrists were handcuffed to the ceiling, and subjected to electroshocks whilst tied to a table. The beatings stopped when being unable to take the torture any more, he 'agreed' with the 'accusations'. He was released after 64 days of detention.[66]

53. Similarly, in territory controlled by 'Donetsk people's republic', individuals continued to be detained under 30-day 'administrative arrest', during which time they are not allowed to communicate with their relatives or lawyers.[67] Sometimes, even confirmation of the detention itself is withheld from the families of detainees, increasing their suffering. For example, in October 2017, around 10 armed individuals wearing balaclavas abducted a man at his parent's house. For 30 days, the man's parents had no information on his whereabouts or fate, despite numerous requests and visits to the 'MGB' office. They would often stand for hours on the street outside 'MGB' and "wait like dogs" in the hope that someone might tell them what happened to their son.

54. OHCHR continued to receive and corroborate information on individuals detained in Izoliatsiia at 3, Svitloho Shliakhu street in Donetsk.[68] OHCHR documented several cases of

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investigation on the same grounds, and the court again quashed the decision. Ruling available from http://reyestr.court.gov.ua/Review/64996006.

[61] *See* OHCHR Report, 16 November 2017 to 15 February 2018, Annex II.

[62] After being released, the detainee informed OHCHR he intended to return to government-controlled territory to seek justice for the arbitrary detention and torture he had suffered. However, in January 2018, he was detained *incommunicado* by 'MGB' in Donetsk and subsequently 'banned' from leaving territory controlled by 'Donetsk people's republic'. Representatives of the Military Prosecutor's Office told OHCHR that they were unwilling to investigate the complaints of conflict-related detainees regarding unregistered detention and torture in Krasnoarmiisk ATP and other unofficial places of detention which allegedly occurred prior to official arrest. OHCHR meeting, 11 July 2018.

[63] *See* OHCHR Report, 16 August to 15 November 2017, para.70.

[64] OHCHR interview, 11 June 2018.

[65] For information about 'preventive arrest', *see* OHCHR Report, 16 February to 15 May 2018, para. 51. OHCHR interviews 7 June 2018, and 6 July 2018.

[66] OHCHR interview, 7 June 2018.

[67] *See, e.g.*, OHCHR Report 16 February to 15 May 2017, paras. 43-44; OHCHR Report, 16 August to 15 November 2017, paras. 40-44; OHCHR Report, 16 November 2017 to 15 February 2018, para. 33.

[68] Before the conflict, Izoliatsiia was an industrial facility which was turned into a cultural centre. In May 2014, it was seized by armed groups and used as a detention facility. OHCHR has previously

individuals arbitrarily arrested by 'MGB' of 'Donetsk people's republic' and held incommunicado in Izoliatsiia under 'administrative arrest' in the first half of 2018.[69] During that time, they were tortured, including by electrocution. Based on interviews with credible sources, OHCHR was able to confirm that at least 40 individuals, including civilians, were being held in Izoliatsiia in the first half of 2018.[70]

55. OHCHR continued to document cases of individuals who disappeared since 2014 and whose whereabouts remain unknown. For example, OHCHR documented the case of a man from Vuhledar and his son who, on 12 June 2015, were abducted by unknown armed people while driving in Donetsk region. They were reportedly held in an unknown location where they were tortured and ill-treated. After a few days, the son was released but the whereabouts and fate of the father remain unknown.[71]

C. Situation of pre-conflict prisoners

56. OHCHR continued monitoring the situation of pre-conflict prisoners who were convicted prior to the outbreak of the conflict and remain in custody in territory controlled by armed groups. OHCHR is aware of at least 184 such prisoners who have requested to be transferred to government-controlled territory. However, no progress was made during the reporting period towards their transfer to government-controlled territory.

57. In territory controlled by 'Luhansk people's republic', some pre-conflict detainees remained detained despite having spent the amount of time in detention equal to the sentences imposed by the judgments of courts of first instance.[72] On 3 April 2018, the 'people's council' amended the 'criminal procedure code' to allow prisoners who had already spent the amount of time in detention equal to their sentences to request to be released with the personal undertaking not to leave territory controlled by the 'republic'. OHCHR is aware of three individuals who have since been released. However, the restriction on their freedom of movement is of concern especially for those whose family resides in government-controlled territory.

58. Another concern is that pre-conflict detainees released in armed group-controlled territory do not always have valid passports or identification documents, which severely restricts their freedom of movement and places them at risk of further 'arrest'. In one case, a man released in June 2016[73] who lacked identification documents tried unsuccessfully to cross the contact line into government-controlled territory three times. During one attempt, he was arbitrarily detained on the armed group-controlled side and held incommunicado for approximately a week, during which he was beaten and subjected to electroshocks.[74] During the reporting period, he was frequently 'arrested' by 'police' due to absence of identification documents, and once held in solitary confinement for two days.[75]

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documented and reported on various human rights violations, including torture, perpetrated at Izoliatsiia. *See* OHCHR Report, 16 August to 15 November 2017, para 54; OHCHR Report, 16 November 2017 to 15 February 2018, para. 67.

[69] OHCHR interviews, 17 May and 22 June 2018.

[70] Ibid.

[71] OHCHR interview, 15 June 2018.

[72] Due to the outbreak of the conflict, appeals submitted in early 2014 never reached courts in government-controlled territory. Meanwhile 'appeals', including from pre-conflict prisoners, submitted to the 'court of appeal' of 'Luhansk people's republic' have not been reviewed as the 'court' has not been established, and neither have their verdicts entered into force, leaving the 'appellants' in a legal limbo.

[73] The man was remanded into custody in 2012 and held in Luhansk SIZO, however the pre-trial investigation was not completed before 2014. In June 2016, a 'court' heard his case, issued a suspended 'sentence' and released him.

[74] He was accused of attempting to transfer information to government-controlled territory.

[75] OHCHR interview, 18 June 2018.

D. Missing persons

I know that my son is dead. I just want to know where his remains are. Give me back what remained of my child. Not knowing anything about your son for three years is torture.

- Mother of missing person abducted by members of armed groups

59. OHCHR welcomes Parliament's adoption of the law on missing persons,[76] which aims at addressing the situation of individuals who are unaccounted for as a result of armed conflict, armed hostilities, public disturbances and natural or man-made disasters. The law provides for the establishment of a unified register of missing persons and of the Commission on Missing Persons, which will coordinate activities of various governmental institutions involved in the tracing and identification of missing persons and providing support to their families. In line with the Convention for the Protection of All Persons from Enforced Disappearance[77] and advocacy by OHCHR and other actors,[78] the law criminalizes enforced disappearance under national legislation[79] and introduces certain social guarantees to respond to the financial needs of relatives of missing persons.[80]

V. Administration of justice

60. In government-controlled territory, OHCHR continued monitoring the prosecution of conflict-related criminal cases and, in that context, documented persistent violations of fair trial rights, including procedural safeguards and judicial guarantees. OHCHR is concerned, in particular, about the manner in which plea bargains and in absentia prosecutions are used, as well as about arbitrary application of provisions exempting members of armed groups from criminal responsibility, attacks and intimidation of defence lawyers by extreme right wing groups, and continuing interference with the independence of judges.

A. Fair trial rights

61. Over the reporting period, Ukrainian courts issued 72 verdicts in criminal cases related to the armed conflict in eastern Ukraine.[81] Forty-four of these were based on plea bargain agreements. In 18 of these cases, no evidence has been entered into the case file. While the criminal procedure legislation prohibits guilty verdicts that are based solely on confessions, use of plea bargains allows the prosecution to circumvent this safeguard. Once a plea bargain has been submitted the court discontinues examination of the case regardless of the stage of the proceedings. It is concerning that defendants may have entered plea bargains under duress, as was documented by OHCHR in a number of cases.[82]

62. In addition, OHCHR notes the vulnerability of individuals who lack identification documents due to the armed conflict. For example, on 1 August, Markivskyi district court

[76] Law of Ukraine 'On the legal status of missing persons' (draft no. 5435), 12 July 2018. The law entered into force on 2 August 2018.

[77] Ukraine acceded to the Convention for the Protection of All Persons from Enforced Disappearance in August 2015.

[78] *See* OHCHR Report, 16 November 2017 to 15 February 2018, paras. 137-138; OHCHR Report, 16 November 2016 to 15 February 2017, paras.150-152.

[79] Criminal Code of Ukraine, Article 146-1.

[80] Article 6 of the Law 'On the legal status of missing persons' proclaims family members of missing persons eligible for the survivors pension benefit.

[81] These include charges of crimes against national security of Ukraine and crimes against public safety. Statistics from the Unified Register of Court Decisions.

[82] OHCHR interview, 11 June 2018; OHCHR trial monitoring 23 June 2018.

of Luhansk region sentenced a man[83] to six years in prison on charges of membership in the armed groups based on a plea bargain.[84] Due to the lack of any ID he had been arrested a number of times on both sides of the contact line. Starting from 24 June, he was subject to repeated interrogations in the absence of a lawyer. The state-provided lawyer was not present during his arraignment hearing, and only later did the lawyer participate via video conference when the plea bargain was presented during his hearing on 1 August.

63. Fifteen guilty verdicts were issued in absentia during the reporting period. OHCHR notes that in absentia proceedings, which were introduced to the Criminal Procedure Code in 2014, are not in line with international human rights standards. According to the latter, in absentia proceedings should be preceded by proper notification of the accused[85] and should provide the opportunity for a full retrial after the authorities locate the person.[86] Neither of these requirements are provided for in the Criminal Procedure Code. Lack of retrial opportunities negatively impacts the rights of the defendants.

64. Some procedural guarantees are not extended to former members of the armed groups who surrendered to Ukrainian law enforcement in exchange for being exempted from criminal responsibility. Due to ambiguities in the Criminal Procedure Code, these individuals are often not immediately provided with a lawyer, or their testimony, which is critical for their exemption from criminal responsibility, may not be properly recorded. While the courts are empowered to exempt an individual from criminal responsibility, they cannot raise this matter proprio motu and are dependent on the prosecutor to request it. The individuals are thus left at the discretion of the prosecutor.

65. During the reporting period, OHCHR documented three incidents where extreme right-wing groups attacked or attempted to intimidate defence lawyers. On 28 July 2018, a group of C14 members verbally attacked and attempted to head-butt a defence lawyer they accused of being a separatist for representing conflict-related defendants. This occurred on court premises in the presence of police who failed to react properly.[87] Three days later, about 50 members of C14 entered the premises of the National Bar Association and aggressively demanded the revocation of the lawyer's licence and prevented the committee of protection of lawyers' rights from holding its session. On 7 August 2018, three members of C14 physically abused another lawyer after he commented on their behaviour in the courtroom. Again the police were present but did not intervene. OHCHR recalls that the lawyers should not be identified with their clients, and that the authorities shall ensure the safety and security of court premises to protect the legal professionals in the exercise of their work.

66. OHCHR continued to document interference with the independence of the judiciary by prosecutors who opened criminal investigations against judges in relation to their duties.[88] For example, following a judicial decision to close a criminal case against Kharkiv mayor Hennadii Kernes and two of his bodyguards after none of the 19 prosecutors attended seven consecutive hearings from 2-10 August,[89] the Prosecutor General publicly

[83] A pre-conflict detainee held in Sverdlovsk SIZO from 2012 to 2016, was released without any documents after being 'sentenced' by the 'Luhansk people's republic' 'court' to four years of deprivation of liberty.

[84] OHCHR trial monitoring, 1 August 2018. The verdict is available from http://reyestr.court.gov.ua/Review/75650045#.

[85] *See, e.g., Daniel Monguya Mbenge* v. Zaire (Communication No. 16/1977, 1990) whereby the United Nations Human Rights Committee concluded that mere publishing of information about a trial in the media is not sufficient to satisfy the due notification requirement, enshrined in article14 of the International Covenant on Civil and Political Rights.

[86] *See, e.g., Colozza v. Italy*, where the European Court of Human Rights concluded that *in absentia* trials are only permissible if retrial is available after the authorities get a hold of person.

[87] C14 posted video of the incident on Facebook, available from https://www.facebook.com/c14.news.reserve/videos/2170974958077O6/.

[88] OHCHR is concerned that launching an investigation into allegations of delivery of an unjust decision may be used to exert pressure on judges over long periods of time while they are under such pending investigations. *See* OHCHR report, 16 February – 15 May 2018, paras. 60-62.

[89] The case related to charges of abduction and ill-treatment of protesters during the Maidan events.

stated that the judge would have to be "brought to account" for his "unjust" decision.[90] The next day, the prosecutor opened an investigation against the judge on charges of delivering a "deliberately unjust decision"[91]. In another example, the prosecutor's office opened a criminal investigation against the judges of Marinskyi district court of Donetsk region on the same charges after the court replaced detention with house arrest for a suspect charged with affiliation with armed groups of 'Donetsk people's republic'.[92]

B. Accountability for cases of violence related to riots and public disturbances

67. OHCHR noted some limited progress in legal proceedings concerning the 2014 Maidan protests and the violent events of 2 May 2014 in Odesa.

1. Accountability for the killings of protesters during the Maidan protests

68. On 11 July 2018, the Prosecutor General implemented a reform measure which reorganized his Office with a view to delimiting structural units dealing with pre-trial investigation and procedural oversight. The Special Investigative Department (SID) dealing inter alia with Maidan-related proceedings, was left with only investigative functions, transferring the procedural oversight to another structural unit. OHCHR will continue following the developments to see how this restructuring of the Office of the Prosecutor General will impact investigative and prosecutorial work carried out on the Maidan cases.

69. On a positive note, OHCHR welcomes progress in the investigation of the killing of two protesters on 19 February 2014, near the SBU office in Khmelnytskyi.[93] Despite the loss of key evidence[94] and legal challenges to the investigation by SBU,[95] on 21 June 2018, SID charged a member of the Khmelnytskyi regional special SBU unit with negligent homicide, infliction of grievous bodily injury, negligent grievous bodily injury, and abuse of authority or office.

70. In another development, on 13 June 2018, the Kyiv city court of appeal overruled[96] the heavily-criticized trial verdict against one of the "titushky"[97] leaders convicted of hooliganism during the Maidan events on 18-19 February 2014 which resulted in the killing of journalist Viacheslav Veremii.[98] The appeal court overturned the trial court's suspended

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[90] https://bit.ly/2MkI8AP

[91] Article 375 of the Criminal Code of Ukraine.

[92] OHCHR trial monitoring, 13 August 2018. A case against judges was initiated under Article 375 of the Criminal Code of Ukraine ("delivery of a deliberately unjust decision").

[93] *See* press release of the Prosecutor General's Office, 22 June 2018, available from https://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=231799, and OHCHR thematic report on accountability for killings in Ukraine from January 2014 to May 2016, footnote 107.

[94] The Military Prosecutor's Office of Western Region which conducted the pre-trial investigation lost the only intact bullet case recovered from the crime scene.

[95] SBU challenged the court ruling granting the prosecution temporary access and permission to forfeit weapons from the Khmelnytskyi SBU armoury, however the appeal was dismissed on 13 November 2017. Court decision available from http://reyestr.court.gov.ua/Review/70389287#. In addition, the SBU confirmed that the date when the Prosecutor General's Office summoned the SBU officer for interrogation as a suspect, coincided with the date when Khmelnytskyi SBU decided to deploy him to the Joint Forces Operation area in eastern Ukraine, making it more difficult for the investigation to reach him. Upon the request of the Prosecutor General's Office the SBU conducted investigation into possible assistance of the senior officials of the Khmelnytskyi SBU to the suspect to evade participation in the criminal case, and denied these allegations.

[96] Verdict available from http://reyestr.court.gov.ua/Review/74688253.

[97] "Titushky" were athletically-built men engaged by law enforcement to attack protestors and create a situation of violence that would then justify subsequent dispersal of undesired protests.

[98] *See* OHCHR Report, 16 November 2017 to 15 February 2018, footnote 68.

sentence of four years[99] with five years of immediate imprisonment, citing that the trial court wrongfully considered the 'sincere repentance' of the accused and aptitude for rehabilitation as mitigating measures to justify the lenient sentence.

71. Related to the same case, the family of Viacheslav Veremii successfully petitioned the court to void the prosecutor's decision taken in 2014 to close the parallel murder investigation against the 'titushky' leader's involvement in the death of their son.[100] Thus, the current prosecutor[101] will now have the opportunity to fully investigate the defendant's specific role and responsibility in the killing.

2. Accountability for the 2 May 2014 violence in Odesa

72. OHCHR noted some limited progress in the investigations and legal proceedings connected to the violent events of 2 May 2014 in Odesa which led to the death of 48 people,[102] with no one yet held accountable for any of these acts.

73. The investigation into the fire at the House of Trade Unions in which 42 people died remains ongoing. Meanwhile, the trial against three fire brigade officials for negligence has stagnated, with no hearings on the merits having taken place since November 2017.

74. On 30 May 2018, an indictment against the former heads of the Odesa city Police Department, the Patrol Service Department and the city Public Security Department of the Ministry of Interior for "abuse of authority or office" was submitted to the Prymorskyi district court of Odesa.[103] Two of the accused are additionally charged with "leaving in danger" the 42 individuals who consequently died in the House of Trade Unions.[104]

75. The trial against the former head of the Odesa regional Police on charges of "abuse of authority or office", "forgery in office" and "leaving in danger" continued,[105] although only three hearings took place during the reporting period.

76. Long-awaited progress was finally seen in the legal proceedings against the only 'pro-unity' activist charged in connection with the 2 May 2014 events. The accused was indicted in April 2015 for the fatal shooting of a civilian in the city centre and the attempted killing of a police officer.[106] On 3 May 2018, after almost a one-year delay, the Prosecutor General's Office sent the indictment for corrections to the Odesa Investigation Department of the National Police and Odesa prosecutor's office. The latter resubmitted the amended indictment to the court on 8 June 2018.[107]

77. No progress was achieved in the appeal proceedings against the acquittal of 19 individuals accused of mass disturbances in the Odesa city centre, which resulted in the

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[99] On 22 December 2017, Shevchenkivskyi district court of Kyiv issued a four-year suspended sentence with a two-year probation period, which would have the likely result of the defendant not having to serve any time. *See* OHCHR Report, 16 November 2017 to 15 February 2018, para. 52.

[100] On 7 May 2018, the Pecherskyi district court of Kyiv annulled the prosecutor's decision of 1 August 2014 to close the investigation into the killing against the 'titushky' gang leader. Decision available from http://reyestr.court.gov.ua/Review/74054794.

[101] The previous prosecutor who closed the investigation into the intentional killing in 2014 left the office shortly thereafter.

[102] According to the Odesa Prosecutor's office, investigations into the 2 May 2014 violence were divided into 13 criminal proceedings against 43 individuals. Two individuals have been convicted, indictments have been submitted against 27 individuals (21 are free pending trial, two are detained under other charges, and one passed away), and 14 suspects are on the wanted list. OHCHR meeting, 10 July 2018.

[103] Criminal Code of Ukraine, Article 135.2.

[104] Ibid. Article 135.3. "leaving in danger" consists of wilfully abandoning a person without help who is in a life-threatening condition and unable to ensure his/her self-preservation, where the perpetrator was obliged and able to provide help.

[105] Ibid. Articles 364.2, 366.2 and 135.2.

[106] The case was transferred from the Prosecutor's Office of Odesa region to the Prosecutor General's Office on 25 May 2017.

[107] According to the Prosecutor's Office (letter from 7 August 2018).

killing of six men.[108] Only three court hearings were scheduled (on 11 June, 23 July and 6 August 2018) but all were adjourned due to the failure of some parties to appear.

C. Territory controlled by armed groups

78. Parallel structures of administration of justice continued operating in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'. Reportedly, in territory controlled by 'Donetsk people's republic', thousands of cases have been processed by 'courts'.[109] In territory controlled by 'Luhansk people's republic', individuals face a structure that does not provide access to remedy and are therefore at risk of indefinite detention.[110] Namely, while the 'code' regulating 'criminal procedures' provides an opportunity to appeal to a 'supreme court', there is no such structure, or any other review body.[111] As a result, 'sentences' that are 'appealed' do not enter into force, defendants cannot start serving their prison terms and therefore remain in indefinite detention without any remedy.[112]

79. Individuals 'accused of' affiliation or links with the Ukrainian military or SBU are 'tried' in closed sessions in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'.[113] This raises concern that those 'prosecuted' are deprived of the essential judicial guarantee of publicity of hearings that would "ensure the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large".[114]

80. OHCHR also remains concerned that lawyers assigned to represent conflict-related detainees are performing their defence functions on a pro-forma basis.[115] Providing a lawyer appears to be done with a view to legitimizing the 'convictions'. These concerns are further heightened by impediments imposed by 'Donetsk people's republic' and 'Luhansk people's republic' for private lawyers hired to engage in the proceedings, e.g., impediments in accessing their clients and information about them.[116]

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[108] *See* OHCHR Report, 16 August to 15 November 2017, para. 89.

[109] As of 9 August 2018, the 'supreme court' reported that since 1 January 2018, it had been 'considering' 4,054 'cases': 1,380 were 'criminal' cases, 1,801 were 'civil', 77 related to 'administrative offences', and 796 were 'commercial cases'. The 'court' reportedly delivered final 'judgments' in 84 per cent of these 'cases'. Statistics are available from https://supcourt-dnr.su/stat/operativnaya-statisticheskaya-informaciya-o-rabote-verhovnogo-suda-sudov-obshchey-21.

[110] In March 2014, two pre-conflict-detainees were convicted to four years in prison; in April 2014, the verdict was appealed by the prosecution. The appeal, however, was not heard before the outbreak of the conflict, and both individuals remained in detention until 18 May 2018, having been held in prison longer than they should have served, when the first-instance 'court' released them on undertaking not to leave, since their case had not been closed.

[111] On 16 August 2018, 'acting head' of 'Luhansk people's republic' issued a 'decree' ordering to proceed with the establishment of the 'supreme court' of 'Luhansk people's republic'. On 28 August 2018, 'people's council' appointed 14 'judges' of the 'supreme court'.

[112] For example, an individual 'arrested' by the armed groups in 2015 on suspicion of arson, and later additionally 'charged' with attempted killing, remains in detention limbo, as only the 'supreme court' may hear his case. OHCHR interview, 25 June 2018.

[113] On several occasions OHCHR was told that 'hearings on the merits' would be closed to the public. OHCHR was able, however, to attend two 'hearings' on the merits and two 'pronouncements' of 'judgments' in 'civil cases'; two 'preliminary hearings', two 'pronouncement of verdicts', one 'hearing on the merits' and one 'hearing' on challenging actions of 'MGB' at the 'military tribunal' of the 'Donetsk people's republic'.

[114] Human Rights Committee, General Comment no. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, para. 28.

[115] OHCHR interview, 19 July 2018. The lawyer was not aware of the details of the case, including the charges his client was facing and the stage of the 'proceedings'.

[116] In one case, a private lawyer hired by the detainee's family was denied access to his client's file. OHCHR interview, 23 May 2018. In another case, the defence lawyer was denied access to his client held in Izoliatsiia, and has not been provided with timely information on his client's health condition. OHCHR interviews, 5 and 10 July 2018.

VI. Democratic/civic space and fundamental freedoms

81. OHCHR continued to monitor the exercise of fundamental freedoms and documented 45 human rights violations and abuses during the reporting period in relation to the fundamental freedoms of opinion and expression, peaceful assembly and association, and religion, as well as the right to non-discrimination and equal protection under the law. The Ukrainian authorities were responsible for 36 of these human rights violations[117] and armed groups were responsible for seven. OHCHR is deeply concerned that, in government-controlled territory, extreme right-wing groups[118] perpetrated at least eight separate attacks, often with impunity.

A. Freedom of opinion and expression and freedom of the media

No one wants to be the next.

- A journalist about the attacks on media professionals and civil activists

82. During the period under review, OHCHR documented an increase in the number of physical attacks against media professionals and other chilling incidents impeding the exercise of their legitimate professional activities. OHCHR documented 30 cases that occurred in this reporting period involving violations of freedom of expression and freedom of the media that ranged from violent physical attacks (including one fatal) against media professionals and civic activists to acts of humiliation or intimidation.

83. OHCHR is alarmed by the increased brutality of some incidents. On 5 June 2018, in the Kharkiv region, an anti-corruption and environmental activist was found hanged in Eskhar village. On 21 June, members of an extreme right-wing group poured a liquid on a female journalist covering their protest in Kyiv[119] and later claimed during a TV interview that this was urine.[120] On 31 July, in Kherson, individuals threw acid on a female senior staff of Kherson city council, known for her anti-corruption views, causing severe burns to her face and body. OHCHR's concern lies not only in the nature of the attacks but also at the repeated claims from victims or their representatives indicating police negligence and/or protracted investigation.[121]

84. Long drawn-out investigations and police de-prioritization of cases involving attacks against civil society activists and media professionals continue to contribute to the compression of civic space as perpetrators are not brought to account. Law enforcement reported that they still had not identified a suspect in the July 2016 killing of renowned journalist Pavlo Sheremet, attributing the delay to the Russian citizenship of the victim and claiming that tracing potential suspects or persons of interest in the Russian Federation was complicated.[122] Additionally, the trial of two men accused of murdering journalist Oles Buzyna has been stalled since February 2018.[123] It was not until August 2018 that the court

[117] In five cases, the attack was allegedly perpetrated by Government actors, and in 10 cases, the Government failed to prevent, investigate and/or prosecute the known perpetrators of the attack.

[118] In this report, the term "extreme right-wing groups" refers to political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. In Ukraine, extreme right-wing groups have perpetrated attacks against Roma and other minorities, including LGBTQI. Through their actions, they bring into question the fundamental principle of non-discrimination by propagating an ideology based on racism, discrimination, xenophobia and intolerance. *See* Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

[119] OHCHR interview, 9 August 2018.

[120] The interview is available from https://www.youtube.com/watch?v=N4fFQa9BBMU.

[121] OHCHR interviews, 3, 6, 9 and 13 August 2018.

[122] Pavlo Sheremet was killed in Kyiv on 20 July 2016.

[123] Oles Buzyna was killed in Kyiv on 16 April 2015. On 28 November 2017, the Prosecutor's Office of Kyiv submitted the indictment against two men accused of executing the murder to the Shevchenkivskyi district court of Kyiv.

finally started hearing on the merits of the case due to procedural obstacles, administrative delays and the unavailability of judges. Meanwhile, there has been no progress in a parallel criminal proceeding, initiated by prosecutors in June 2017 to identify the organizers of the murder.[124]

85. OHCHR is concerned about measures taken by the Government in the name of countering security threats and preventing cybercrimes. Following a presidential decree banning 192 websites on 14 May 2018[125], a draft law pending Parliamentary review would vest the National Security and Defence Council with wide discretion and power to block online information resources without judicial oversight.[126] OHCHR reiterates that States must refrain from undue interference with the right to seek, receive and impart information, and recalls that any restriction on freedom of expression (including online expression) must be proportional and necessary to achieve the purported aim.[127]

86. As observed in past reports, activists calling for anti-corruption reforms remained vulnerable to violations and abuses aimed at silencing them.[128] On 7 June, the set-up of Ukraine's anti-corruption structure was completed in accordance with the recommendations of the Venice Commission, with the adoption of legislation creating the High Anti-Corruption Court. The Court will have jurisdiction over all future high-level corruption cases including those cases currently investigated by the National Anti-Corruption Bureau. The next critical steps to operationalize the Court will be the selection of national judges, which requires involvement of a Public Council of International Experts.[129]

Territory controlled by armed groups

We are constantly afraid of saying something that may be used against us.

We are paranoid to talk in public about anything sensitive. These are terrifying times.

- Parents of a conflict-related detainee in territory controlled by armed groups

87. In territory controlled by armed groups, the space for freedom of opinion and expression remained highly restricted. OHCHR documented the case of two men detained and charged with 'espionage', inter alia, for their pro-Ukrainian position expressed in social media.[130] More limitations were introduced by the self-proclaimed 'Donetsk people's republic' impinging on the ability of foreign media to report and work in armed group controlled territory. The local media currently operates mainly as tool for promoting those in control.[131]

88. OHCHR continued to document cases of human rights abuses that occurred in the earlier stages of the conflict linked to the forceful suppression of critical voices, which has

[124] OHCHR interview, 20 July 2018.

[125] Decree of the President of Ukraine No. 126/2018 enacting National Security and Defence Council Resolution dated 2 May 2018 "On Imposition and Cancellation of Personal Special Economic and Other Restrictive Measures (Sanctions)", available from http://www.president.gov.ua/documents/1262018-24150.

[126] Draft Law No. 6688 "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Information Security of Ukraine" was included in the agenda of Parliament on 21 June 2018 but has not been brought to a vote. There are indications it may again be tabled for vote during the September session. Draft law available from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62236.

[127] International Covenant on Civil and Political Rights, article 19(3).

[128] The highly criticized e-declaration requirements imposed for anti-corruption activists in March 2017 remained in force. See OHCHR Report, 16 February to 15 May 2018, para 87; and OHCHR Report, 16 May to 15 August 2017, para 95.

[129] The selection process of judges foresees a role for a new Public Council of International Experts (PCIE), a six-member body, which will have the duty to review the applications of candidates for the position of judges in the High Anti-Corruption Court and to assess them against integrity and professionalism criteria. Members of the PCIE will be selected by the High Qualification Commission of Judges from among the candidates nominated by the international organizations "with which Ukraine cooperates in the area of corruption prevention and counteraction in accordance with Ukraine's international treaties".

[130] OHCHR interviews, 17 and 20 July 2018.

[131] OHCHR interviews, 3 August 2018.

had a long-term impact in stifling fundamental freedoms. In one case, a former journalist of a national newspaper was detained by armed groups in Horlivka in February 2015 for his publications on social media; during his one-month detention, he was reportedly tortured and subjected to ill-treatment.[132]

89. As of 15 August 2018, at least one journalist and one blogger, both affiliated with the Kyiv bureau of 'Radio Liberty', remained detained in territory controlled by 'Donetsk people's republic' – Stanislav Asieiev (aka Vasin) and Oleh Halaziuk. According to numerous Ukrainian media reports, Stanislav Asieiev started a hunger strike in early July. With no access to places of deprivation of liberty in territory controlled by 'Donetsk people's republic', OHCHR was not able to verify allegations of the hunger strike or to assess Asieiev's physical and moral conditions.

B. Discrimination, hate speech, racially-motivated violence and manifestations of intolerance

After this attack every time I see a knife I get scared.

- A Roma victim attacked by members of extreme right-wing groups

90. During the reporting period, OHCHR documented eight incidents of discrimination, hate speech and/or violence targeting individuals belonging to minority groups or holding alternative or minority opinions. Four incidents involved violence by members of extreme right-wing groups, who often act with impunity.

91. In a worrisome continuing trend of violence against members of the Roma minority, OHCHR documented three attacks against Roma settlements in Kyiv, Ternopil and Lviv, reportedly perpetrated by members of extreme right-wing groups. In the most serious incident, on 23-24 June 2018, a group of young males attacked a Roma settlement in Lviv, stabbing one man to death and injuring three others, including a 10-year-old boy.[133] All three attacks resulted in the expulsion of the Roma communities from their homes. On 25 July, in Chernihiv region, three men brutally beat a Roma man and damaged his car.

92. On 24 May 2018, a lawyer representing the victims of a May 2017 attack on a Roma settlement in Vilshany[134] was violently attacked by a group of men, reportedly including a local prosecutor. The lawyer was threatened with death if he did not drop the case.

93. While OHCHR is concerned about the lack of progress in investigations into the Vilshany attack, it notes progress regarding the investigation and prosecution of the attack against Roma and their expulsion by the local community in Loshchynivka, in August 2016[135]. On 9 August 2018, the Odesa circuit administrative court partially satisfied the claims of seven Roma plaintiffs, ruling that the actions of the head of the village in support of the expulsion were illegal, however the court did not order payment of restitution damages and did not recognize the inaction of police during the forced eviction of Roma as a criminal offence.[136]

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[132] OHCHR interview, 14 August 2018.

[133] The alleged perpetrators were aged between 16 and 20 and claimed to be members of a newly-established extreme right-wing group called "Sober and angry youth". The new group is reportedly connected to the "Misanthropic Division", an ultra-nationalist group with ties to the Azov volunteer battalion, which claimed responsibility for an attack on LGBTQI activists in Lviv in March 2018. Six suspects were in detention as at August 2018 and two were under house arrest.

[134] On 16 May 2017, a group of Roma were attacked in Vilshany village by a member of the Kharkiv regional council, the head of the Vilshany village council and others. One Roma was killed and four others injured. To date, no one has been held accountable for this killing and violence.

[135] OHCHR meetings with Prosecutor's Office of Odesa, 10 July 2018, and National Police, 12 July 2018. *See also* OHCHR Report, 16 May to 15 August 2017, para. 131; OHCHR Report, 16 August to 15 November 2016, para. 152.

[136] In reference to the case where local residents of Loshchynivka decided to evict Roma residents from the village.

94. OHCHR also documented two attacks against members of the LGBTQI community in June and July 2018.[137] In both cases, police initiated criminal investigations only on charges of "hooliganism". OHCHR notes that attacks against members of the LGBTQI community and other minorities are rarely classified under criminal provisions pertaining to hate crimes, which carry heavier penalties.

C. Freedom of peaceful assembly and association

95. Peaceful assemblies organized by minority groups or individuals holding alternative social and political opinions continued to be disrupted by members of extreme right-wing groups. On 19 May 2018, a Festival of Equality organized in Chernivtsi (Chernivtsi region) was disrupted by members of extreme right-wing groups, forcing the cancellation of the event while the organizers and participants had to be escorted by police from the venue.[138]

96. Due to this incident, threats of violence and an atmosphere of intolerance, LGBTQI activists decided not to organize Festivals of Equality foreseen throughout the country, fearing attacks by extreme right-wing groups. Instead, the lectures, seminars and discussions were organised to take place online only.

97. On 17 June 2018, approximately 3,500 participants took part in the Kyiv Pride Equality March, which took place without any major security incident.[139] OHCHR commends the professional conduct of police during the March, which ensured that participants could enjoy the right to peaceful assembly.[140] Also, there were no major security incidents during the Equality March in Kryvyi Rih on 21 July. Police were present and provided security for participants.

98. OHCHR notes that when extreme right-wing groups disrupted peaceful gatherings and police failed to facilitate the exercise of freedom of peaceful assembly, criminal cases have either not been promptly initiated or not initiated at all. For example, complaints were filed with police regarding the disruption of the Festival of Equality in Chernivtsi and of a public discussion on LGBTQI rights organized by Amnesty International in Kyiv in mid-May 2018.[141] In both cases, police refused to initiate a criminal case arguing that no elements of a crime had been identified.

99. OHCHR is concerned about reports of pressure on the National Bar Association in Kyiv concerning conflict-related cases or cases of defendants alleged to be affiliated with the armed groups (see above under Fair trial rights). OHCHR documented three physical attacks against legal defenders committed by C-14, with police either being negligent in not intervening during the attack or not effectively investigating the incidents.[142] In one case,

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[137] On 30 June 2018, an LGBTQI activist was violently attacked by a group of men in Kryvyi Rih. On 4 July 2018, PrideHub (an LGBTQI-friendly space in Kharkiv, was attacked during a meeting of a language club. The perpetrators used smoke and gas grenades, and destroyed furniture and other property. The club attendees were evacuated through a back door, and no casualties were reported.

[138] The event was disrupted by Traditions and Order, Katehon, and Sisterhood of St. Olha. No criminal case has been initiated concerning this incident.

[139] The march is organized annually by the LGBTQI community and calls for equal rights and protection for members of minority groups. In 2015 and 2016, members of extreme right-wing groups attacked participants in these marches.

[140] Some clashes reportedly occurred in the early morning, before the march started, and resulted in minor injuries to six counter-demonstrators (members of extreme right-wing groups) and five police officers. Fifty-six counter-demonstrators were arrested due to aggressive behaviour and released shortly after the event. During the march, police reacted effectively to small skirmishes with counter-demonstrators; no participants in the event sustained any injuries.

[141] The public discussion on "The Offensive against LGBTQI Rights as a Form of Censorship: The Russian experience" was disrupted by approximately 50 members of extreme right-wing groups, including Nemezida, Tradition and Order, Right Sector and the political party Svoboda.

[142] OHCHR interviews, 10, 14 and 15 August 2018.

the attack was followed by death threats in social media for one defence lawyer and his family.[143]

Territory controlled by armed groups

100. In territory controlled by armed groups, OHCHR continued to observe an absence of space for peaceful assemblies organized by residents at their own initiative, where critical opinions could be expressed. In fact, restrictions on exercising this freedom continued, albeit formalized, in territory controlled by 'Luhansk people's republic' through a 'decree' signed on 27 June 2018, requiring organizers of peaceful assemblies to seek prior approval. Such approval would be granted based on an assessment by either the 'ministry of state security' or the 'ministry of the interior'.

D. Freedom of religion or belief

101. During the reporting period, OHCHR documented six attacks against churches of the Ukrainian Orthodox Church of Moscow Patriarchate. For instance, on 5 August 2018, in Odesa, the words "FSB Branch"[144] was inscribed on the front entrances of three churches. Police opened criminal cases regarding two of these incidents.

Territory controlled by armed groups

102. In territory controlled by both 'republics', procedures for mandatory registration of all religious organizations limit freedom of religion or belief and create protection concerns for parishioners.

103. In territory controlled by 'Luhansk people's republic', a 'law' was adopted on 2 February 2018 to provide for a 6-month period during which all religious organizations wishing to operate in the territory had to register, and failure to register would be considered as having ceased operations.[145] The registration process has been extended to 15 October. It requires the submission of personal data of the founders of the organizations, and demands a minimum of 20 founders for an organization to be registered (resulting in members becoming founders). This requirement raises double concerns for many religious organizations. Some parishioners do not want the 'authorities' to know of their participation in a certain religious organization. Some fear facing issues in government-controlled territory if it becomes known that they are registered with the 'republic'.

104. Similarly, in territory controlled by 'Donetsk people's republic', a 'law' was adopted on 13 April 2018 "on freedom of religion and religious unions", requiring all religious organizations to complete a 'registration' procedure by 1 March 2019.[146] Those failing to do so will not be allowed to operate in territory controlled by 'Donetsk people's republic'.[147]

105. On 21 June 2018, 'MGB' closed the only functioning mosque in Donetsk. The premises were searched, religious literature was confiscated and two Muslim practitioners were questioned and forced to sign a commitment not to leave territory controlled by 'Donetsk people's republic'.

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[143] OHCHR interview, 14 August 2018.

[144] A reference to the Federal Security Service of the Russian Federation.

[145] On 2 February 2018, the 'people's council' adopted the 'law' on 'freedom of conscience and religious associations', which prescribes that a religious organization must have at least 20 founders. The organization's statute must include information about all founders and be submitted as part of the package of documents required for 'registration'.

[146] Although the 'law' was 'adopted' on 13 April 2018, the full text appeared online only on 16 May 2018, available from https://dnrsovet.su/zakonodatelnaya-deyatelnost/prinyatye/zakony/zakon-donetskoj-narodnoj-respubliki-o-svobode-veroispovedaniya-i-religioznyh-obedineniyah/.

[147] Available from https://bit.ly/2KieZQV.

VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol

106. he Russian Federation continued to apply its laws in Crimea and the city of Sevastopol in violation of the obligation under international humanitarian law to respect the legislation of the occupied territory.[148]

107. Further, OHCHR recorded flagrant violations of fair trial rights, including the retroactive application of Russian Federation penal law, arbitrary interference with privacy which disproportionately affected Crimean Tatars, and infringements on the exercise of freedom of religion. In total, OHCHR documented 47 violations and abuses during the reporting period; of this number 25 violations occurred within the reporting period; with the Government of the Russian Federation responsible for 22 and the Government of Ukraine for 3.[149]

A. Due process, fair trial rights, and rights of detainees

108. On 19 June 2018, a court in Simferopol sentenced five Crimean Tatar men for taking part in "mass disturbances involving violence" on 26 February 2014, handing them suspended prison sentences ranging from three and a half to four and a half years. They had all been arrested and charged in 2015[150] as part of a group of pro-Ukrainian demonstrators who staged a protest outside the Parliament of Crimea and clashed with pro-Russian supporters as tensions over the status of Crimea were rising ahead of the March 2014 'referendum'.[151]

109. In relation to the "26 February cases"[152], the Russian Federation applied its legislation retroactively to events preceding the implementation of Russian Federation legislation in Crimea, which commenced on 18 March 2014.[153] This contravenes the principle of legality as well as the obligation of an Occupying Power to maintain the penal legislation in force in the occupied territory and to apply it in court.[154]

110. In protest of what they believe to be politically motivated prosecutions of Ukrainian citizens in Crimea, several detainees went on hunger strike, including Ukrainian filmmaker Oleg Sentsov currently serving a 20-year prison sentence in the Russian Federation for terrorism offences allegedly committed in Crimea. OHCHR recalls that in accordance with international standards the Russian Federation authorities must upon the consent of

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[148] *See* Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention), Article 43 of the Regulations concerning the Laws and Customs of War on Land, Annex to Convention (IV) respecting the Laws and Customs of War on Land, The Hague, 18 October 1907, Geneva Convention IV on Civilians, art. 64.

[149] The violations attributable to the Government of Ukraine did not occur in Crimea itself, but concern events in mainland Ukraine with connection to the situation in Crimea. They are related to freedom of movement and access to public services.

[150] Three of the individuals were released on personal guarantee in 2015, while two were released in 2017 on house arrest.

[151] In addition, on 12 September 2017, a deputy chair of the Mejlis was sentenced to eight years of imprisonment for allegedly encouraging demonstrators to use violence. He was pardoned a few weeks later. *See* OHCHR Report, 16 August to 15 December 2017, paras. 133-134.

[152] On 26 February 2014, during a rally in Simferopol pro-Ukrainian and pro-Russian protesters faced off, leading to a stampede and the death of two pro-Russian demonstrators. The defendants were accused of "mass disturbances" involving the use of force against pro-Russian demonstrators: fighting, throwing glass bottles and other heavy objects, using tear gas and pushing them with their weight.

[153] On 18 March 2014, a "Treaty on the Accession of the Republic of Crimea to the Russian Federation" was signed in Moscow, and on 21 March 2014, the Parliament of the Russian Federation ratified a Constitutional Law "On the Accession of the Republic of Crimea to the Russian Federation and the Creation of the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol within the Russian Federation".

[154] Geneva Convention IV, art. 70.

detainees on hunger strike regularly carry out medical examinations in order to determine necessary treatment and ensure appropriate medical care.[155]

B. Freedom of religion, conscience and thought

111. The prosecution on terrorism-related charges of Muslims suspected of membership in radical religious organizations and groups in Crimea continued. In May 2018, OHCHR recorded three new cases of detention of Crimean Tatar men accused by Russian Federation authorities of affiliation with Hizb ut-Tahrir.[156] In total, since the beginning of the occupation, at least 33 Crimean residents have been arrested for alleged ties with radical Muslim groups, and four of them have been convicted.

112. Another ten individuals accused of membership in Hizb ut-Tahrir stood trial in Rostov-on-Don in the Russian Federation during the reporting period, in violation of international humanitarian law prohibiting the forcible transfers of protected persons outside the occupied territory, regardless of the motive.[157]

113. In the majority of the cases documented by OHCHR, the charges against the Muslims were based on the content of conversations amongst themselves, during which they discussed global political developments, religious writings, Muslim culture and application of sharia law.[158] In none of the cases known to OHCHR did Russian Federation authorities present any credible evidence that the defendants called for the use of force, violation of public order or engagement in any unlawful activity in Crimea. OHCHR recalls that freedom to manifest one's religion or belief may be subject only to limitations that are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.[159]

C. Right to privacy and family life

114. During the period under review, OHCHR documented 14 house raids by the Federal Security Service of the Russian Federation (FSB) and police, including 13 which targeted properties owned by Crimean Tatars. This follows a pattern identified by OHCHR since early 2017 when 90 out of 102 documented searches concerned properties of Crimean Tatars. These actions were usually carried out with the justification of searching for weapons, drugs or literature with "extremist" content forbidden under Russian Federation law. OHCHR notes that the Russian Federation's anti-extremism law gives wide discretion to law enforcement agencies to interpret and apply its provisions, which can be viewed as an infringement of the principles of legality, necessity and proportionality.[160] In addition, the raids often involved excessive use of force and the searches extended beyond what was warranted by the circumstances,[161] thereby interfering with the rights to privacy and family life, in violation of international human rights law.[162]

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[155] According to the information of the High Commissioner for Human Rights of the Russian Federation (Ombudsperson), Sentsov is held in a separate cell of the colony's medical ward where he regularly receives nutrition replacements and infusion therapy, including parenteral nutrition. Statement available from http://ombudsmanrf.org/news/novosti_upolnomochennogo/view/upolnomochennyj_poluchila_ot_fsin_rossii_spravku_o_sostojanii_zdorovja_olega_sencova.

[156] On 14 February 2003, the Supreme Court of the Russian Federation banned *Hizb ut-Tahrir* as a terrorist organization.

[157] Geneva Convention IV on Civilians, art. 49.

[158] OHCHR interview, 7 June 2018.

[159] International Covenant on Civil and Political Rights, art. 18(3).

[160] *See* Opinion No. 660/2011on the Federal Law on Combating Extremist Activity of Russian Federation, The European Commission for Democracy Through Law (Venice Commission), 1 June 2012.

[161] For example, on 10 August 2017, FSB and special force police (OMON) stormed into a private house without presenting any grounds or warrant for a search. They forced all the adults face down on the

D. Property rights

115. OHCHR noted changes in the long-standing issue of property rights of formerly deported persons, predominantly Crimean Tatars. Following their mass return between 1989 and 1994 after decades-long exile, Crimean Tatars started settling spontaneously across the Crimean peninsula and constructing unauthorized settlements. Lacking a legal framework and large-scale state reintegration programme, Ukraine struggled to cope with this massive phenomenon. Their settlements included individuals who spontaneously squatted on land and collective occupation of land plots, which created potential for conflict. In August 2013, an estimated 2,000 hectares were occupied by 56 unauthorized settlements involving an estimated 8,000 to 15,000 people.[163]

116. After March 2014, the Russian Federation authorities in Crimea adopted special legislation enabling "land squatters" to legalize their property claim through inclusion in a dedicated electronic database.[164] As of October 2017, nearly 4,300 persons, about 55 per cent of those registered in the database, were allocated land plots free of charge.[165] On 17 May 2018, the head of the Crimean Committee on Interethnic Relations announced plans to allocate an additional 1,700 land plots to registered persons.[166]

VIII. Technical cooperation and capacity-building

117. OHCHR engages in technical cooperation and capacity-building activities to assist the Government of Ukraine and civil society to protect and promote human rights.

118. Upon request of the Ministry of Justice of Ukraine, in June 2018, OHCHR provided expert advice on a methodology developed by the Ministry for monitoring and evaluation of implementation of the National Human Rights Strategy of Ukraine and its Action Plan. OHCHR recommended ways to improve reporting by implementing agencies and information management by a coordinating body in order to measure progress in achieving the objectives and goals of the National Human Rights Strategy. OHCHR will further support the Ministry in implementing the recommendations to improve the Action Plan monitoring, reporting and evaluation processes and thus in promoting more effective implementation of the National Human Rights Strategy.

119. OHCHR continued promoting the implementation of Universal Periodic Review (UPR) recommendations made to Ukraine during the third UPR cycle (2012-2017). To facilitate this process, OHCHR produced an updated compilation of thematically clustered recommendations of the United Nations human rights mechanisms addressed to Ukraine, including the latest UPR recommendations accepted by the Government.

120. OHCHR also continued to raise awareness among Government actors of various international human rights norms and standards. On 20 June 2018, OHCHR delivered a session on international standards of housing, land and property rights of IDPs and other conflict-affected population for approximately 25 judges of the Supreme Court and lower courts in Donetsk and Luhansk regions (controlled by the Government), including judges who have been displaced from territory controlled by armed groups.

121. On 21 June, as part of the institutionalized pre-deployment programme for officers of the Civil-Military Cooperation unit (CIMIC), OHCHR delivered a session on prevention

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floor, beat the male residents and searched the house in a brutal manner. They then coerced a female resident into signing a document which she had no chance to read. OHCHR interview, 17 July 2018.

[162] International Covenant on Civil and Political Rights, art. 17.

[163] The integration of formerly deported people in Crimea, Ukraine. Needs assessment, August 2013, available from https://www.osce.org/hcnm/104309?download=true.

[164] Law of the Republic of Crimea No. 66-ЗРК/2015 "On allocation of state and municipal land plots and certain issues of land relations", available from http://www.crimea.gov.ru/textdoc/ru/7/act/66z.pdf.

[165] https://rg.ru/2016/11/24/reg-ufo/v-krymu-uchastniki-polian-protesta-poluchili-zemliu-menshe-chem-za-god.html.

[166] https://crimea.ria.ru/society/20180517/1114469971.html.

of arbitrary detention, torture and conflict-related sexual violence, as well as on the protection of freedom of movement and housing, land and property rights, to approximately 20 military officers to be deployed to eastern Ukraine as part of CIMIC. OHCHR has been participating in the pre-deployment programme since September 2017, and has delivered a total of five trainings for over 150 officers.

122. OHCHR referred 30 allegations of human rights violations and abuses to specific duty-bearers. To the Government of Ukraine, 13 violations were raised with two cases partially addressed and criminal investigations opened in four cases. In armed group controlled territory, 18 human rights violations and abuses were raised in 15 cases with 'Donetsk people's republic' and 2 issues were raised with 'Luhansk people's republic'. The 'Donetsk people's republic' fully addressed one case, and opened an enquiry in another.

IX. Conclusions and recommendations

We are turning into demoralized and broken down people as a result of this never-ending armed conflict.

- Resident of a village near the contact line

123. Since the previous reporting period, the conflict in eastern Ukraine has persisted, punctuated with a phase of heated hostilities, and OHCHR continued documenting violations and abuses by all parties to the conflict against civilians on either side of the contact line.

124. In Crimea, the Government of the Russian Federation, as the Occupying Power, continued to violate its obligations under international humanitarian law with regard to human rights and fundamental freedoms, notably through discriminatory practice and retroactive application of laws of the Occupying Power that infringe on an individual's right to housing, freedom of religion, speech and association.

125. The civilian casualty figures documented by OHCHR again demonstrate that the ceasefire, which was partially observed following the parties' recommitment under the 1 July 'harvest ceasefire', led to a significant decrease in civilian casualties, notably thanks to reduced use of direct and indirect explosive weapons targeting populated areas. However, despite the 'harvest ceasefire', civilian casualties persisted due to the ever-present lethal contamination of landmines and explosive remnants of war along the contact line.

126. OHCHR notes continued impunity for conflict-related human rights violations in Ukraine. In this regard OHCHR recalls that the Government of Ukraine bears the primary responsibility to investigate and prosecute violations of the rights to life, liberty and security of persons, noting that failure to do so, may constitute a separate violation under article 2 of ICCPR.

127. A dire social and economic situation continues to prevail among conflict-affected civilians living along the contact line. The surge in crossings during the summer months underscored the risks people are willing to take to access entitlements and social benefits. The spike in hostilities in May through June spotlighted the devastating effects on people caught in the conflict who lose their homes and have no recourse to recover, start over, or find alternative accommodation.

128. OHCHR is concerned about the upcoming winter which worsens the conditions for civilians caught on both sides of the contact line. OHCHR is also concerned about the human rights situation ahead of the elections in 2019, notably the increasing frequency and gravity of violence threatening civic space.

129. **Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain valid. OHCHR further recommends the following, based on the issues identified from 16 May to 15 August 2018:**

130. **To the Ukrainian authorities:**

Cabinet of Ministers

(a) Adopt a comprehensive State policy and mechanism on remedy and reparation for civilians injured during the hostilities and to relatives of those killed in hostilities, in accordance with international standards[167]; and Cabinet of Ministers to adopt specific remedy and reparation measures for children with the Status of a Child Affected by Armed Hostilities and Armed Conflicts.

(b) Create and maintain a coordinated system to register property destroyed and damaged in the context of the armed hostilities, and linked registry; develop a comprehensive mechanism for restitution of property and compensation for any damages and destruction.

(c) Ensure swift implementation of the law 'On the legal status of missing persons', in particular by providing sufficient resources for effective realization of the mandate of the Commission on Missing Persons.

Judges

(d) Carefully review all plea bargain agreements and refuse to accept any guilty plea when there are reasonable grounds to believe that it has been obtained by coercion, including torture or ill-treatment.

State and local authorities

(e) Systematically and publicly condemn all acts of violence committed based on race, sex, religion, language, national or ethnic origin, political or social opinion, sexual orientation, gender identity or any other grounds of discrimination prohibited under international human rights standards.

(f) Prepare and make available safe, adequate alternative accommodation as a response to the needs of the civilian population affected by armed hostilities.

(g) Where military presence within civilian areas is justified due to military necessity, take all possible steps to protect the civilian population and their property; develop a procedure for documentation of military use.

Office of the Prosecutor General and law enforcement agencies

(h) Ensure effective investigations into allegations of torture and ill-treatment, arbitrary detention and enforced disappearance, including those allegedly committed by State actors or individuals acting with State authorization, support or acquiescence.

(i) Ensure that crimes, such as those referred to in recommendation (e) are appropriately classified, effectively investigated in a timely manner, and that perpetrators, members of extreme right-wing groups as any others, are held accountable.

131. **To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic':**

(a) Bring an end to the conflict by strictly adhering to the ceasefire and implementing other obligations foreseen in the Minsk agreements, in particular regarding the withdrawal of prohibited weapons and disengagement of forces and hardware.

(b) Ensure full compliance with international humanitarian law fundamental principles of distinction, proportionality and precaution, including by

[167] In particular United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

immediately ceasing the use of weapons with indiscriminate effects in areas populated and used by civilians, particularly weapons with a wide impact area or the capacity to deliver multiple munitions over a wide area.

(c) Take all feasible precautions to minimize harm to the civilian population during operations, including by locating military objectives such as armed forces and weapons outside of densely populated areas, and refraining from deliberately targeting civilians or civilian objects, including objects indispensable to the survival of the civilian population, such as water infrastructure.

(d) Clear explosive remnants of war, take measures to protect civilians from the effects of these weapons, and assist the efforts of international and non-governmental organizations working in these areas, in line with ICRC Protocol V, Certain Conventional Weapons (2003).

(e) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': Ensure unimpeded access of OHCHR and other independent international observers to all places of deprivation of liberty, including for private confidential interviews with detainees.

(f) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': Refrain from holding individuals in incommunicado detention and provide immediate information on the whereabouts of detainees to their families.

(g) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': Take practical steps to enable and facilitate the voluntary transfer of all pre-conflict detainees to government-controlled territory.

(h) To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic': eliminate intolerant rhetoric of opposing or alternative points of view.

132. To the Government of the Russian Federation:

(a) Implement General Assembly Resolution 72/190 of 19 December 2017, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea.

(b) Respect obligations applicable to an Occupying Power pursuant to international humanitarian law, including the obligation to respect laws in force in an occupied territory.

(c) Reverse all verdicts issued by courts in Crimea on the basis of retroactive application of Russian Federation legislation to events which preceded the occupation.

(d) Refrain from arresting and prosecuting Crimean residents for alleged membership in organizations and groups considered extremist in the Russian Federation but legal under Ukrainian law.

(e) Return to Crimea all protected persons who have been transferred to the territory of the Russian Federation to stand trial or serve criminal sentences in violation of international humanitarian law.

(f) Put an end to the abusive police raids of Crimean Tatars' properties, which violate the right to respect for private and family life.

133. To the international community:

(a) Continue using all diplomatic means to press all parties to immediately end hostilities and implement all obligations foreseen in the Minsk agreements, emphasizing how the active armed conflict causes suffering of civilians and hampers prospects for stability, peace and reconciliation.

(b) Use all influence possible to ensure unimpeded access and operation of international organizations in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'.